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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 27

**GENERAL COMMITTEE OF ADJUSTMENT OF THE
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
FOR THE PACIFIC LINES OF SOUTHERN
PACIFIC COMPANY (AN UNINCORPORATED
ASSOCIATION), PETITIONER,**

vs.

**SOUTHERN PACIFIC COMPANY AND GENERAL
GRIEVANCE COMMITTEE OF THE BROTHER-
HOOD OF LOCOMOTIVE FIREMEN AND ENGINE-
MEN (AN UNINCORPORATED ASSOCIATION)**

No. 41

**GENERAL GRIEVANCE COMMITTEE OF THE
BROTHERHOOD OF LOCOMOTIVE FIREMEN
AND ENGINEMEN (AN UNINCORPORATED AS-
SOCIATION), PETITIONER,**

vs.

**GENERAL COMMITTEE OF ADJUSTMENT OF THE
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
FOR THE SOUTHERN PACIFIC LINES OF
SOUTHERN PACIFIC COMPANY, ETC., ET AL**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT**

**WRITINGS FOR CERTIORARI FILED { MARCH 22, 1943
APRIL 12, 1943**

CERTIORARI GRANTED MAY 24, 1943

No. 9991

United States
Circuit Court of Appeals

For the Ninth Circuit.

GENERAL COMMITTEE OF ADJUSTMENT
OF THE BROTHERHOOD OF LOCOMO-
TIVE ENGINEERS FOR THE PACIFIC
LINES OF SOUTHERN PACIFIC COM-
PANY, an unincorporated association,
Appellant,

vs.

SOUTHERN PACIFIC COMPANY, a corpora-
tion, and GENERAL GRIEVANCE COM-
MITTEE OF THE BROTHERHOOD OF
LOCOMOTIVE FIREMEN AND ENGINE-
MEN, an unincorporated association,
Appellees.

Transcript of Record

In Two Volumes

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States for the Northern District of California,
Southern Division.**

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In the Southern Division of the United States District Court for the Northern District of California.

Civil Action, File Number 21301 L

GENERAL COMMITTEE OF ADJUSTMENT
OF THE BROTHERHOOD OF LOCOMO-
TIVE ENGINEERS FOR THE PACIFIC
LINES OF SOUTHERN PACIFIC COM-
PANY, an unincorporated association,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a corpora-
tion,

Defendant.

COMPLAINT FOR DECLARATORY
RELIEF

1. The action arises under a law regulating commerce (28 USC Sec. 41, eighth), to-wit, the Railway Labor Act (45 USC Sec. 151, et seq.), and seeks a declaration of the rights and other legal relations of the parties hereto (28 USC Sec. 400) and further relief, as hereinafter more fully appears.

2. Defendant is, and at all times herein mentioned has been, a carrier within the meaning and scope of said Railway [1*] Labor Act, i. e., it is a common carrier engaged in the transportation of pas-

*Page numbering appearing at foot of page of original certified Transcript of Record.

sengers and property by railroad among the States of Oregon, California, Arizona, New Mexico, Texas, Nevada and Utah. A portion of said railroad is a separate operating unit called Pacific Lines, with termini at Portland, Oregon, San Francisco, California, Ogden, Utah, and El Paso, Texas, and with many branch lines.

3. There is, and continuously for many decades there has been, a craft or class of locomotive engineers, now numbering approximately 1500 employees, in the service of defendant as such carrier on and throughout said Pacific Lines (excluding only therefrom small portions known as "former El Paso and Southwestern System" and "Phoenix Division of former Arizona Eastern Railroad"), which craft or class ever since the enactment of said Railway Labor Act has been recognized by defendant as a craft or class of employees of defendant for all the purposes of said Act. At least 85 percent of all of said locomotive engineers comprising said craft or class on and throughout said Pacific Lines are members of the Grand International Brotherhood of Locomotive Engineers, a voluntary unincorporated association composed of approximately 60,000 persons throughout the United States and Canada who follow the occupation of locomotive engineer on the various railroads of the United States and Canada. Plaintiff is a voluntary unincorporated association organized pursuant to and under the authority of the constitution and laws of said

Grand International Brotherhood of Locomotive Engineers.

4. Plaintiff is, and ever since the enactment of said Railway Labor Act has been, the sole designated representative of said craft or class of locomotive engineers under, and for all the purposes of, said Railway Labor Act, including collective bargaining, and making and maintaining agreements with defendant concerning rates of pay, rules, and working conditions of loco- [2] motive engineers. For many years before the enactment of the Railway Labor Act, and ever since, there have been agreements negotiated from time to time between plaintiff and defendant concerning rates of pay, rules and working conditions of said craft. The last of said agreements was made in writing, effective January 9, 1931, and has been continuously in effect ever since, with occasional amendments and additions.

5. Article 32, section 22, of the present agreement between plaintiff and defendant reads as follows:

“The General Committee of Adjustment, Brotherhood of Locomotive Engineers [plaintiff herein] will represent all locomotive engineers in the making of contracts, rates, rules, working agreements and interpretations thereof.

“All controversies affecting locomotive engineers will be handled in accordance with the recognized interpretation of the Engineers’ contract as agreed upon between the Committee

of Brotherhood of Locomotive Engineers' and the Management:

"In matters pertaining to discipline or other questions not affecting changes in Engineers' contract, the officials of the Company reserve the right to meet any of their employees either individually or collectively."

6. There is, and at all times herein mentioned has been, a separate craft or class of locomotive firemen in the service of defendant, on and throughout said Pacific Lines, the designated representative of which craft or class of firemen, for the purposes of said Railway Labor Act, is an unincorporated association (hereinafter for brevity called "said Firemen's Committee") having the common name of General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen. Said Firemen's Committee has never been the designated representative [3] of said craft of engineers.

7. Defendant recruits most of the members of its craft of locomotive engineers from the competent members of said craft of locomotive firemen in the order of their seniority of service. The numbers of the respective crafts of engineers and Firemen fluctuate from time to time in correspondence with the volume of transportation business of defendant. As said volume increases, senior firemen are called to service as engineers; as it decreases, junior engineers are demoted to firemen. When employees are serving defendant as engineers, plaintiff is their desig-

nated representative under and for the purposes of the Railway Labor Act; when serving defendant as firemen, said Firemen's Committee is their representative.

8. Said craft of engineers represented by plaintiff is the higher paid and older in point of service of the two crafts, as aforesaid. Both crafts are paid for service on the basis of hours served or miles run. As said volume of transportation business fluctuates, it is of economic importance to the craft of engineers represented by plaintiff that the number of members in said craft at any given time should not be so great as to spread the whole volume of work lower than an agreed amount per member of the craft. In said agreement, effective January 9, 1931, the monthly minimum of hours of service or miles run by members of said craft of engineers has been agreed between plaintiff and defendant.

9. Notwithstanding the premises, and in violation of (a) said Railway Labor Act, (b) said agreement effective January 9, 1931, (c) the rights of plaintiff as sole designated representative of said craft of engineers, and (d) the rights of the members of said craft of locomotive engineers on defendant railroad, defendant and said Firemen's Committee have collectively negotiated, and by an agreement effective June 1, 1939, known by them as [4] "Firemen's Agreement," have agreed, in writing, concerning rules and working conditions governing and affecting said craft of engineers in their service as locomotive engineers, including among others, the

following provisions of said Firemen's Agreement, to-wit:

"Article 51

"Adjustment of Differences

"Sec. 1. The right of any engineer, fireman, hostler or hostler helper to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded." * * *

"Article 43

"Demotions and Lost Runs

"Sec. 1. When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working list on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district under the following conditions:

"First: That no reduction will be made so long as those in assigned or extra passenger service are earning the equivalent of 4000 miles per month; in assigned, pooled or chain-gang freight, or other service, paying freight rates, are averaging the equivalent of 3200 miles per month; on the road extra list are averaging the equivalent of 2600 miles per month, or those on the extra list in switching service are averaging 26 days per month.

"Second: That when reductions are made they shall be in reverse order of seniority.

"Sec. 2. When hired engineers are laid off on account of reduction in service, they will retain all seniority [5] rights; provided, they return to actual service within 30 days from the date their services are required.

"Sec. 3. Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineers, and as soon as it can be shown that engineers in assigned or extra passenger service can earn the equivalent of 4800 miles per month; in assigned, pooled, chain-gang or other regular service paying freight rates, the equivalent of 3800 miles per month.

"Sec. 4. In the regulation of passenger or other assigned service, sufficient men will be assigned to keep the mileage, or equivalent thereof, within the limitation of 4000 and 4800 miles for passenger and 3200 and 3800 miles for other regular service, as provided herein. If, in any service, additional assignments would reduce earnings below these limits, regulation will be effected by requiring the regular assigned man or men to lay off when the equivalent of 4800 miles in passenger or 3800 miles in other regular service has been reached.

"On road extra list, sufficient engineers will be maintained to keep the average mileage, or equivalent thereof, between 2600 and 3800 miles

per month; provided that when engineers are cut off the working list and it is shown that those on the extra lists are averaging the equivalent of 3100 miles per month, engineers will be returned to the extra lists if the addition will not reduce the average mileage, or the equivalent thereof, below 2600 miles per month.

“Where separate extra lists are maintained for yard service, sufficient engineers will be maintained to keep the average earnings between 26 and 35 days per month; provided that when engineers are cut off the yard working [6] list and it is shown that men are averaging the equivalent of 31 days per month, engineers will be returned to service if the addition will not reduce the average earnings below 26 days per month.

“Note: As to mileage regulations affecting part-time men, see addendum to Article 43, pages 118-119-120.

“Sec. 5. * * *

“Sec. 6. In making reductions and replacing firemen upon the service lists, the same mileage shall apply as in the case of engineers.” * * *

“Article 37

“Section 15. * * *

“Question: (a) If it becomes necessary to call a fireman for service as an emergency engineer, when the engineers' extra list is ex-

hausted, who should be called?

“(b) Should a senior demoted engineer holding assignment as fireman become available after man used under (a) returns to terminal or completes day's work, who should be used?

“Answer: (a) The senior available qualified man in accordance with his seniority as engineer.

“(b) The senior available man.”

“Addendum to Article 43; Application of Mileage Regulations to Part-Time Men.

(At pages 118-119-120 of said Fireman's Agreement).

“Excerpts from letter of November 30, 1934, from Mr. Wm. M. Leiserson, Chairman, National Mediation Board, to Mr. A. Johnston, Grand Chief Engineer, Brotherhood of Locomotive Engineers, Mr. D. B. Robertson, President, Brotherhood of Locomotive Firemen and Enginemen, Mr. J. A. Phillips, President, Order of Railway Conductors, and Mr. A. F. Whitney, President, Brotherhood of Railroad [7] Trainmen, concerning the application of mileage regulations to part-time men, the conditions of which were, before the President's Emergency Board of April-May, 1937, accepted by Mr. G. W. Laughlin, First Assistant Grand Chief Engineer, Brotherhood of Locomotive Engineers, and Mr. C. V. McLaughlin, Vice President, Brotherhood of Locomotive Firemen and

Enginemēn, and concurred in by the Carrier, as disposing of Case No. 11 that was pending before that Board:

'We understand also from your conversation with respect to part-time men, whether they be engineers and firemen or conductors and trainmen, a sound and practical basis for adjustment would be to permit each organization to regulate the conditions of the part-time man during the time that these men are employed at the occupation covered by such organization. Thus if the mileage limitation on any road was 3300 miles for firemen and 3800 miles for engineers, a man in freight service making 1500 miles as a fireman, then used as emergency engineer for 500 miles, would be permitted to make only 1300 additional miles as a fireman; or a man making 2000 miles as an extra engineer who is cut off the engineer's extra board, would be permitted to make only 1300 additional miles as a fireman. On the other hand, a fireman who has made his maximum mileage of 3300 miles and has been taken off on that account, might be used as an emergency engineer or go on the engineers' extra board for the remainder of the month to make the additional 500 miles up to 3800 in accordance with the engineers' mileage limitation.'

'We understood from the discussions also that nothing in such a regulation of the part-

time men would prevent any organization from regulating the mileage of its own [8] men by adjustment at the end of each month or checking period, in order to offset any excess mileage that an individual may have made. That is to say, if a trainman had made 400 extra miles as an emergency conductor in any one month or checking period, and if at the end of that month or checking period he was working as a trainman, the trainmen's organization would have authority to regulate him to bring his mileage within the trainmen's limitation. If, on the other hand, the man was working as a conductor at the end of the month or checking period, he would be subject to the regulation of the conductors' organization. The point, as we understood it, was that each organization would be free to make adjustment for excess mileage of the men under its jurisdiction to bring them within the mileage limitations set by that organization. And the fact as to whether a man was subject to the jurisdiction of one organization or another would be established by the craft that he was working in at the end of the month or checking period."

10. • An actual controversy exists between plaintiff and defendant with respect to the rights and other legal relations of plaintiff in the premises. It is the assertion and contention of plaintiff that the provisions quoted from said Firemen's Agreement

in paragraph 9, *supra*, as agreed between defendant and said Fireman's Committee, and the interpretation and application thereof, violate and interfere with the right and duty of plaintiff to act as the sole designated representative of said craft of engineers, with the right and duty of the plaintiff to make, maintain, and interpret agreements concerning rates of pay, rules and working conditions for said craft of engineers, and with the rights of said craft of engineers, under and for the purposes of said Railway Labor Act and the aforementioned Engineers' Agree- [9] ment by and between plaintiff and defendant; and that by said Firemen's Agreement defendant has bargained collectively with said Firemen's Committee with respect to rules and working conditions governing, affecting and concerning said craft of engineers in their service as locomotive engineers. They do so violate and interfere. Defendant contends that they do not.

Wherefore, plaintiff demands that the Court adjudge and declare the rights and legal relations of plaintiff and defendant in the premises, with such further relief in the decree, and at the foot thereof, as may be proper.

GEORGE M. NAUS,

Attorney for Plaintiff.

HORN, WEISELL, McLAUGHLIN &
LYBARGER

By CLARENCE E. WEISELL,

Of Counsel for Plaintiff.

[Endorsed]: Filed Aug. 12, 1939. [10]

[Title of District Court and Cause.]

ANSWER

The above-named defendant, for its answer to the plaintiff's complaint, on file in the above-entitled action, admits, alleges and denies as follows:

1. Admits the allegations of paragraph 2 of said complaint.

2. Answering paragraph 3 of said complaint, defendant admits that, substantially as alleged in the first sentence of said paragraph, commencing with the word "there" in line 8 on page [11] 2, and continuing to and including the word "Act" in line 16, on page 2 of said complaint, there is and for many years last past has been a craft or class of railroad employes known as locomotive engineers, and that certain members of said craft or class are employed by defendant on its Pacific Lines, as the same are described in paragraphs 2 and 3 of said complaint; but defendant denies that the number of such locomotive engineers in its employ is now, or continuously or at any time or times during the several decades last past has been, approximately 1500; and in this behalf defendant alleges that the number of such employes, qualified as locomotive engineers, and holding seniority in defendant's service and employment as such engineers, is and for several years immediately last past has been approximately 2500. Defendant admits, in this behalf, that said craft or class of engineers has been recognized by defendant as a separate craft or class of employes,

for the purposes of the Railway Labor Act as defined in Section 2 of said Act, and particularly for the purpose of determining the representative of said craft or class, as contemplated by paragraph Fourth of said Section 2.

Further answering the allegations of said paragraph 3, commencing with the words "At least" in line 16, and concluding with the word "Engineers" in line 26; all on page 2 of said complaint, defendant states that it is without knowledge or information sufficient to form a belief as to the truth of said allegations.

3. Admits the allegations of paragraphs 4, 5 and 6 of said complaint.

4. Answering paragraph 7 of said complaint, defendant admits that from time to time, when additional locomotive engineers are required in its service, they are largely obtained from the ranks of qualified firemen, and that such firemen are generally advanced to service as engineers in accordance with their seniority [12] of service as firemen; admits further that the number of the men in service as engineers varies continually in accordance with the fluctuations in the volume of defendant's traffic and consequent fluctuations in the quantity of transportation service required of and performed by defendant; that the number of men in service as firemen also varies continually, and for similar reasons; that when said volume of traffic and transportation service increases, and additional engineers are

required, furloughed engineers (i. e., those who do not hold seniority as firemen, and are commonly known as "hired" engineers); and properly qualified firemen are called to service as engineers; and correspondingly, when said volume of traffic and transportation service declines, and fewer engineers are required, such "hired" engineers, whose seniority as engineers is insufficient to enable them by the exercise of said seniority to continue their employment as engineers, are furloughed, and those engineers holding seniority as firemen, whose seniority as engineers is insufficient to enable them by the exercise thereof to continue their employment as engineers, are demoted from the grade or status of engineers to the grade or status of firemen, such displacement from the grade or status of engineers by furlough or demotion being accomplished in the reverse order of the seniority, as engineers, of the men affected thereby.

Further answering said paragraph 7, defendant denies, generally and severally, all and singular, the allegations set forth in the sentence commencing with the word "When", in line 9, and concluding with the word "representative", in line 13, all on page 4 of said complaint; and in this behalf defendant alleges that, under and for the purposes of the Railway Labor Act, plaintiff is the designated representative of persons in the employ of defendant, who are serving as engineers, to the extent and only to the extent that said plaintiff represents the craft

or class of engineers as an entirety, for purposes of collective bargaining and [13] agreement; that said plaintiff has not and does not thereby become, and has not been, and is not now, the designated representative, or the representative at all, of each or any person or persons serving as engineers, for all or any purposes of or under the Railway Labor Act, or for any other purposes, except to the extent that any one or more of said persons may individually have selected said plaintiff as his or their individual representative for such purpose. Defendant further alleges that, irrespective of the plaintiff having been designated as and being presently the representative of the craft or class of engineers, as an entirety, for purposes of collective bargaining and agreement, each individual employe, whether serving as an engineer or fireman or in any other capacity, is entitled without interference on the part of plaintiff or defendant, or any other person or organization, to select his own representative under the Railway Labor Act for the purpose of presenting, adjusting and settling his individual grievances and disputes growing out of his employment by defendant.

5. Answering paragraph 8 of said complaint, defendant admits that, substantially as alleged in the first sentence of said paragraph 8, the rates of pay for engineers are, in general, somewhat higher than for firemen upon corresponding runs or in corresponding services; and that engineers, as a

group, are in general older in point of aggregate years of service, than are firemen; and in this respect defendant alleges that substantially all engineers in defendant's service also hold seniority as firemen and, in nearly all cases, the seniority of each individual, as a fireman, antedates his seniority as an engineer. Defendant admits further substantially as alleged in the sentence commencing with the word "Both", in line 16, and ending with the word "run", in line 17, on page 4 of said complaint, that individuals employed by defendant, as either firemen or engineers, are paid wages for their services, based in general upon the miles run, either actual or constructive, [14] or the hours on duty, or a combination of both hours and miles, whichever results in the greater payment; but in this behalf defendant alleges further that such wage payments are made pursuant to and are governed by specific provisions of current working agreements; that such provisions are lengthy, involved, and complicated, and designed to cover the wide variety of services performed and conditions encountered in the conduct of the defendant's railroad business; that such provisions embody, among other things, clauses obligating defendant, in certain instances, to make wage payments in the nature of penalties, i. e., for work not done and services not rendered.

Further answering said paragraph 8, and particularly that portion of said paragraph commencing

with the words "As said" in line 17, and concluding with the words "the craft", in line 22, on page 4 of said complaint, this defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments contained therein.

Further answering said paragraph 8, and particularly the last sentence of said paragraph commencing with the words "In said", in line 22 on said page 4, defendant denies each and every, all and singular, generally and specifically, the allegations set forth in said sentence.

6. Answering paragraph 9 of said complaint, defendant admits that, substantially as therein alleged, said defendant entered into an agreement with said Firemen's Committee, effective June 1, 1939, known as the "Firemen's Agreement for Southern Pacific Company—Pacific Lines"; and that said firemen's agreement ever since has been, and now is, in full force and effect, and in this behalf defendant alleges that said agreement is, in fact, the current working agreement for firemen on defendant's Pacific Lines, entered into pursuant to the Railway Labor Act, and providing the rates of pay, rules, and working conditions for firemen, hostlers, [15] and hostler helpers on said Pacific Lines; admits further that there are embodied in said firemen's agreement the articles and sections set forth in words and figures in said complaint, commencing on line 6, on page 5 thereof, and con-

tinuing to and including line 19 on page 9 thereof. Defendant denies each and all of the other allegations of said paragraph 9, and in particular denies that all or any of said provisions of said firemen's agreement, or any portion thereof, however interpreted, is or ever has been in violation of the Railway Labor Act, or any provision thereof, or in any manner in violation of the engineers' agreement, dated and effective January 9, 1931, or in any manner in violation of the rights or any rights of plaintiff as representative of the craft or class of locomotive engineers, or in violation of the rights or any rights of the members or any members of said craft of said locomotive engineers employed on defendant's railroad, either as alleged by plaintiff or otherwise.

Further answering said paragraph 9, defendant alleges that said current firemen's agreement, entered into with the Firemen's Committee as aforesaid effective June 1, 1939, was in fact and effect, nothing more than the revision and consolidation, without material change, of preexisting agreements theretofore entered into between defendant and said Firemen's Committee, the making and existence of all of said agreements having at all times been fully known to the plaintiff, and to each of the individual members of the plaintiff committee.

In this behalf defendant further alleges that Article 51, Section 1, of the current firemen's agreement (set forth in full in lines 6 to 13, inclusive, on

page 5 of said complaint) was brought forward into the firemen's agreement, dated June 1, 1939, without any change whatsoever from a previous firemen's agreement, similar in form to the agreement of June 1, 1939, entered into between defendant and the Firemen's Committee, effective as of May 1st, [16] 1929; that Article 43 of the firemen's agreement (as reproduced in said complaint, commencing in line 15 on page 5, and continuing to and including line 10 on page 7 of said complaint) was, with the exception hereinafter set forth, likewise carried forward into the current firemen's agreement of June 1, 1939, from said preceding firemen's agreement, entered into between defendant and the Firemen's Committee as of May 1st, 1929; that although the portions of said Article 43 reproduced in lines 20 to 32 on page 6, and lines 1 to 6 on page 7, of said complaint, did not appear in the firemen's agreement of May 1st, 1929, the substance thereof was separately agreed to on October 31, 1930, by and between defendant and the Firemen's Committee, and thereupon reduced to writing; that said agreement of October 31, 1930, was further amplified by a written agreement entered into between defendant and the Firemen's Committee on March 24, 1939, shortly prior to the revision, reprinting, and formal execution of the current firemen's agreement.

Further answering said paragraph 9, defendant alleges that the portion of Section 15 of Article 37

of the firemen's agreement of June 1, 1939, reproduced in lines 11 to 22, inclusive, on page 7 of said complaint, was agreed to in writing, as between defendant and the Firemen's Committee, on or about the 3rd day of December, 1935, and thereupon became and ever since has been and now is in full force and effect, and was added to the current edition of the firemen's agreement, as a part thereof, when the same was consolidated and revised, effective June 1, 1939, as aforesaid.

Further answering said paragraph 9, defendant alleges that the addendum to Article 43, "Application of Mileage Regulations to Part-Time Men" reproduced at lines 23 to 32, inclusive, on page 7, lines 1 to 32 on page 8, and lines 1 to 19, inclusive, on page 9 of said complaint, is the substance of an agreement [17] entered into between defendant, the Firemen's Committee, and also the plaintiff, each through its lawfully authorized representative, in settlement of certain controversies then pending to which the plaintiff, the defendant, and the Firemen's Committee were parties, which agreement was dated May 4, 1937; that said agreement was duly incorporated in the revised and reprinted current edition of the firemen's agreement, effective June 1, 1939, as aforesaid.

7. Answering paragraph 10 of said complaint, defendant admits that plaintiff makes the assertions and contentions therein set forth, but denies that the same are well founded in either law or fact; defend-

ant denies, in particular, the allegations set forth in the sentence appearing in lines 5 and 6 on page 10 of said complaint, and reading "they do so violate and interfere". Defendant admits that an actual controversy exists between plaintiff and defendant, as alleged in said paragraph 10.

Wherefore, having fully answered said complaint, defendant prays that the same be dismissed, and that defendant have judgment for its costs of suit herein incurred, and for such other and further relief as may be meet and proper.

C. W. DURBROW,
HENLEY C. BOOTH,
BURTON MASON,

Attorneys for Defendant.

Service of the foregoing Answer and receipt of copy thereof is admitted this 27th day of September, 1939.

GEO. M. NAUS,
HORN, WEISELL, McLAUGHLIN & LYBARGER,

Attorneys for Plaintiff.

Attorneys for Intervener.

[Endorsed]: Filed Sept. 27, 1939. [18]

District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 9th day of October, in the year of our Lord one thousand nine hundred and thirty-nine.

Present: the Honorable Harold Louderback, District Judge.

No. 21301-L Civil

[Title of Cause.]

After hearing attorney for the intervenor herein, and no other appearance being made, it is Ordered that the petition for leave to intervene be granted.

[19]

[Title of District Court and Cause.]

ANSWER OF INTERVENER [20]

Intervener, by leave of court first obtained, files its answer as follows to the plaintiff's complaint:

First Defense

I.

Intervener admits paragraphs 1 and 2 of the complaint.

II.

Answering paragraph 3 of the complaint, Intervener admits that there is and continuously for many years has been a craft or class of locomotive engineers in the service of defendant on and throughout Pacific Lines, which craft or class, ever since the enactment of the Railway Labor Act (U. S. C. 45:151, et seq.), has been recognized by defendant as a craft or class of employees of defendant for the purposes of said Act. Intervener denies that the number of locomotive engineers in the employ of defendant's Pacific Lines is or has been at any time mentioned in paragraph 3 approximately 1500. Intervener is informed and believes, and therefore avers, that the number of engineers qualified and holding seniority in defendant's service is approximately 2500. Intervener is without knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in the last two sentences of paragraph 3 (line 16, commencing with "At least," to and including line 26), except that intervener admits that the Grand International Brotherhood of Locomotive Engineers is a voluntary unincorporated association of locomotive engineers on the various railroads of the United States and Canada.

III.

Intervener admits paragraphs 4, 5 and 6 of the complaint, but intervener avers that both under the Railway Labor Act and under the contracts between

the parties, intervener [21] has all of the rights averred in this answer, and if any allegation of any of said paragraphs can be construed as being contrary to the averments hereof, intervener does not admit but denies such allegation.

IV.

Intervener admits paragraph 7 of the complaint, except that it denies each and every allegation in the last sentence thereof (line 9, commencing with "When employees," to and including line 13). Intervener avers that plaintiff is the designated representative of employees working for defendant as engineers only to the extent that plaintiff represents the craft or class of engineers as an entirety for the purpose of collective bargaining and agreement. Plaintiff is not and never has been the representative of any person serving as engineer for any other purpose except to the extent that such person, as an individual, may select or have selected plaintiff to represent him. Under the Railway Labor Act every employee of defendant has the right to select without interference or coercion his own representative for the presentation of individual grievances.

V.

Answering paragraph 8 of the complaint, intervener admits that the craft of engineers is, generally speaking and as a group, the higher paid and older in point of service of the two crafts of engineers and firemen, and admits that both crafts are paid for service on the basis of hours served and miles

rum. Intervener is without knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in the third sentence (line 17, page 4, commencing with "As said volume," to and including the words "the craft," in [22] line 22, page 4) of paragraph 8. Intervener denies each and every allegation in the last sentence of paragraph 8 (line 22, page 4, commencing with "In said agreement" and ending with "plaintiff and defendant," line 25, page 4).

VI.

Answering paragraph 9 of the complaint, intervener admits that it entered into an agreement with defendant effective as to rules on June 1, 1939, and that said agreement contained, among other provisions, the provisions quoted in said paragraph of the complaint. Intervener denies each and every other allegation of said paragraph 9.

VII.

Answering paragraph 10 of the complaint, intervener admits that plaintiff makes the assertions and contentions therein stated, and admits that an actual controversy exists between plaintiff and defendant, but denies that any of the said assertions and contentions of plaintiff is well founded, and denies that any provision of said Firemen's agreement violates or interferes with any right of plaintiff or any of plaintiff's members, or any right of the craft of engineers, or is in any way contrary to the Railway Labor Act.

Second Defense

For a second defense to said complaint and to the alleged cause or causes of action therein, intervenor avers:

I.

The Brotherhood of Locomotive Firemen and Enginemen is and was at all times herein mentioned an unincorporated voluntary association, and intervenor at all said times was and [23] is now an unincorporated, voluntary association organized under the authority of said Brotherhood.

II.

Plaintiff and intervenor each has a contract with defendant. Plaintiff's contract became effective January 9, 1931, and is called herein the "Engineers' agreement"; intervenor's agreement became effective as to rates of pay October 1, 1937, and as to rules June 1, 1939, and is called herein the "Firemen's agreement."

III.

In locomotive employment in railway operation there are constant changes in the duties and status of employees and a constant ebb and flow between the crafts of engineers and firemen. The number of engineers in defendant's service varies continuously with fluctuations in volume of traffic, seasonal and otherwise, and the number of firemen in defendant's service varies continuously for the same reasons. When the volume of business increases, furloughed engineers, who do not hold seniority as firemen, and

properly qualified firemen are called to service as engineers. When traffic declines engineers are demoted and many of them displace firemen because most engineers in defendant's service also hold seniority as firemen, and in most of such cases the person's seniority as fireman antedates his seniority as engineer.

IV.

By reason of the conditions of their employment, the craft of firemen represented on defendant's lines by intervenor has a direct and important interest in the conditions under which firemen may become engineers or engineers may displace firemen. For many years before and at all times since the [24] *the passage of the Railway Labor Act* said Brotherhood of Locomotive Firemen and Enginemen, through its appropriate agencies, has bargained and made contracts with various rail carriers, including defendant, with respect to the same subject matter as is covered by the provisions of the Firemen's agreement quoted in the complaint. Said Firemen's agreement was, in effect, a revision and consolidation of preexisting agreements theretofore entered into between defendant and intervenor, all of which were made with the full knowledge of the Brotherhood of Locomotive Engineers and of plaintiff and of each of plaintiff's individual members.

Section 1 of Article 51 of said Firemen's agreement quoted in the complaint was based upon a similar provision in the agreement between defendant and intervenor, dated May 1, 1929, which was

based upon a practically identical provision in subsection (a) of Article VII of the agreement called "Chicago Joint Agreement," dated May 17, 1913, between the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen, and a substantially similar provision has since appeared in all contracts of each Brotherhood, or the agencies thereof, with defendant.

All portions of Article 43 quoted in the complaint, with the exception of the last three paragraphs of section 4 (commencing with "On road extra list," in line 20, page 6, of the complaint, to and including line 6, page 7 thereof), are the substantial equivalent of provisions of the agreement between defendant and intervener, dated May 1, 1929. The first paragraph of section 1 of said Article 43 is the substantial equivalent of section 36 (a) of the agreement between the Brotherhood of Locomotive Firemen and Enginemen and defendant, dated May 16, [25] 1910, and all the provisions of said Article 43 quoted in the complaint, with the exception of the last three paragraphs of section 4 thereof, appeared in substantially the same form in Article XI of said Chicago Joint Agreement, dated May 17, 1913. Said last three paragraphs of section 4 are the equivalent in substance of an agreement between defendant and intervener, dated October 31, 1930.

That portion of section 15 of Article 37 in the Firemen's agreement which is set forth in paragraph 9 of the complaint is the precise equivalent

of an agreement made between intervener and defendant, dated December 3, 1935.

The "Addendum to Article 43; Application of Mileage Regulations to Part-Time Men," quoted in paragraph 9 of the complaint, and being excerpts from a letter of November 30, 1934, as therein stated, is the substance of an agreement entered into between defendant, plaintiff and intervener dated May 4, 1937, which was later incorporated into the said Firemen's agreement effective June 1, 1939.

Neither the Firemen's agreement nor any provision thereof is or was at any time a violation of plaintiff's rights under the Railway Labor Act or under the Engineers' agreement, or in violation of any right of any member of plaintiff or of the Brotherhood of Locomotive Engineers.

V.

"Members" of the Brotherhood of Locomotive Firemen and Enginemen are at all times in the service of defendant as engineers, and such members desire to be represented by intervener in the handling of any grievances which may arise out of such employment. Under the Railway Labor Act intervener has the right to represent such members and also any other employees of [26] defendant who desire representation by intervener in the handling of grievances. Intervener's said right of representation is expressly provided for in section 1 of Article 51 of said Firemen's agreement (set forth in paragraph 9 of the complaint), and is recognized by said Engineers' agreement effective January 9, 1931.

Wherefore, intervener prays that the court decree that plaintiff take nothing by this suit; that plaintiff is not entitled to any of the relief prayed herein; that each and every provision of said Firemen's agreement mentioned in the complaint is valid and binding in accordance with its terms; that intervener recover its costs and have such other and further relief as is appropriate in the premises.

DONALD R. RICHBERG,

EUGENE M. PRINCE,

Attorneys for Intervener.

DAVIES, RICHBERG, BEEBE, BUSICK &
RICHARDSON,

815 Fifteenth Street,

Washington, D. C.

PILLSBURY, MADISON & SUTRO,

225 Bush Street,

San Francisco, California,

Of Counsel. [27]

State of California,

City and County of San Francisco—ss.

C. W. Moffitt, being first duly sworn, deposes and says: That he is an officer of intervener, to wit, General Chairman of the Brotherhood of Locomotive Firemen and Enginemen, Southern Pacific Company (Pacific Lines), an unincorporated association, and as such officer is authorized to make this verification on behalf of said intervener; that he has read the foregoing answer and knows the con-

tents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information or belief, and that as to those matters he believes it to be true.

C. W. MOFFITT

Subscribed and sworn to before me this 27th day of September, 1939.

[Notarial Seal]

FRANK L. OWEN,

Notary Public in and for the City and County of San Francisco, State of California.

Receipt of a copy of the within Answer is hereby admitted this 28th day of September, 1939.

C. W. DURBROW,

HENLEY C. BOOTH,

BURTON MASON,

Attorneys for Defendant.

Receipt of a copy of the within Answer is hereby admitted this 28th day of September, 1939.

GEO. M. NAUS,

HORN, WEISELL, McLAUGH-

LIN & LYBARGER,

Attorneys for Plaintiff.

[Endorsed]: Filed Oct. 9, 1939. [28]

District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Saturday, the 23rd day of March, in the year of our Lord one thousand nine hundred and forty.

Present: the Honorable Harold Louderback, District Judge.

No. 21301-L Civil

[Title of Cause.]

After hearing attorneys herein, it is Ordered that the trial of this case be set for June 18th, 1940, at ten o'clock a. m. [29]

District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 16th day of May, in the year of our Lord one thousand nine hundred and forty.

Present: the Honorable Harold Louderback, District Judge.

No. 21301-L Civil

[Title of Cause.]

On motion of George Naus, Esq., attorney for plaintiff, Mr. Goodrich, Esq., appearing as attorney for the Southern Pacific Company, and Eugene Prince, Esq., appearing as attorney for the intervenor, consenting thereto, it is Ordered that this case now on the calendar for June 18th, be re-set for September 4th, 1940, for trial. [30]

District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 9th day of July, in the year of our Lord one thousand nine hundred and forty.

Present: the Honorable Harold Louderback, District Judge.

No. 21301-L Civil

[Title of Cause.]

Ordered this case go off the calendar for September 4th, 1940, and is hereby reset for trial for September 19th, 1940, at ten o'clock A. M. [31]

District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 10th day of September, in the year of our Lord one thousand nine hundred and forty.

Present: the Honorable Harold Louderback, District Judge.

No. 21301-L Civil

[Title of Cause.]

Pursuant to motions and consents of attorneys herein, it is Ordered that this case go off the calendar for September 19th, 1940, and is hereby reset for Court trial for October 1st, 1940, at 10 o'clock a.m. [32]

District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 1st day of October, in the year of our Lord one thousand nine hundred and forty.

Present: the Honorable Harold Louderback, District Judge.

No. 21301-L Civil

[Title of Cause.]

Ordered that the trial of this case be continued to October 3rd, 1940, at ten o'clock a. m., for trial.

[33]

District Court of the United States
Northern District of California
Southern Division


At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 3rd day of October, in the year of our Lord one thousand nine hundred and forty.

Present: the Honorable Harold Louderback, District Judge.

No. 21301-L Civil

[Title of Cause.]

By consent of attorneys for all parties, it is Ordered that the trial of this case be continued to October 10th, 1940, at ten o'clock a. m., at Sacramento. [34]



District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 10th day of October, in the year of our Lord one thousand nine hundred and forty.

Present: the Honorable Harold Louderback, District Judge, in chambers.

No. 21301-L Civil

[Title of Cause.]

This case came on regularly this day for trial before the Court. George M. Naus, Esq., attorney for the plaintiff was present, and upon his motion, Clarence E. Weisell, Esq., who was present, was ordered admitted to practice before this Court for the trial of this case and was associated with Mr. Naus as attorney for the plaintiff. Burton Mason, Esq., was present as attorney for the defendant. Eugene R. Prince, Esq., attorney for the Intervening Defendant was present, and upon his motion, Donald R. Richberg was admitted to practice before this Court for the trial of this case and was associated with Mr. Prince as attorney for the Intervening Defendant. The attorneys aforesaid each waived trial by jury. Messrs. Naus, Mason and Richberg each gave statements of their respective cases to the Court. Peter O. Peterson was sworn and

testified on behalf of the plaintiff, who rested. Cornelius M. Buckley was sworn and testified on behalf of the defendant, who rested. David B. Robertson was sworn and testified on behalf of the Intervening Defendant. Exhibits marked Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9a, 9b, 9c were introduced into evidence and exhibits marked Nos. A, B and C were introduced into evidence and exhibits marked Nos. A, B & C were introduced for identification. Ordered that the further trial of this case be continued to October 11th, 1940, at ten o'clock a. m. [35]

District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California; held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 11th day of October, in the year of our Lord one thousand nine hundred and forty.

Present: the Honorable Harold Louderback, District Judge, in chambers.

No. 21301-L Civil

[Title of Cause.]

The attorneys herein being present, the trial of this case was resumed. David B. Robertson was recalled and testified further on behalf of the Intervening Defendant, who rested. In rebuttal, Geo. W.

Laughlin was sworn and testified on behalf of the plaintiff. Exhibits marked Nos. 10 and 11 were introduced into evidence and exhibit marked No. D was introduced for identification. Plaintiff rested. Mr. Richberg made a motion for Judgment upon the pleadings, and made a motion for Judgment upon the evidence, on behalf of the Intervening Defendant, and by stipulation between Mr. Naus, Mr. Mason and Mr. Richberg, the Court granted permission to the Messrs. Mason and Richberg to file written motions for Judgment. By consent of said attorneys, it is Ordered that the case be submitted on briefs to be filed in 30, 30 and 20 days, said time to start running upon the filing with the Clerk of the Reporter's transcript. [36]

District Court of the United States
Northern District of California
Southern Division

At a stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 25th day of November, in the year of our Lord one thousand nine hundred and forty.

Present: the Honorable Harold Louderback, District Judge.

No. 21301-L Civil

[Title of Cause.]

Ordered that the above-entitled case be dropped from the Judicial Conference Calendar. [37]

District Court of the United States
Northern District of California
Southern Division,

At a stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 31st day of March, in the year of our Lord one thousand nine hundred and forty-one.

Present: the Honorable Harold Louderback, District Judge.

No. 21301-L Civil

[Title of Cause.]

On motion of Harold Lerner, Esq., and it appearing that all the briefs have been filed, it is Ordered that this case be and the same is hereby submitted.

[38]

District Court of the United States
Northern District of California
Southern Division

At a stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 28th day of April, in the year of our Lord one thousand nine hundred and forty-one.

Present: the Honorable Harold Louderback, District Judge.

No. 21301-L Civil

[Title of Cause.]

It appearing from the record that this case is now under submission, it is Ordered that the case be dropped from the Judicial Conference Calendar.

[39]

District Court of the United States
Northern District of California
Southern Division

At a stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Wednesday, the 30th day of April, in the year of our Lord one thousand nine hundred and forty-one.

Present: the Honorable Harold Louderback, District Judge.

No. 21301-L Civil

[Title of Cause.]

This case having been tried and submitted, and being now fully considered, it is Ordered that a Judgment be entered for the defendant and intervenor, upon findings of fact and conclusions of law, to be filed, together with costs. [40]

District Court of the United States
Northern District of California
Southern Division

At a stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 8th day of July, in the year of our Lord one thousand nine hundred and forty-one.

Present: the Honorable Harold Louderback, District Judge.

No. 21301-L Civil

[Title of Cause.]

On July 3, 1941, the Court approved and signed the defendants and intervenor's proposed Findings of Fact and Conclusions of Law and Decree, and it now appearing to the Court that the parties herein entered into and filed a stipulation on June 23, 1941, extending the time to July 21, 1941, within which the plaintiff might file its proposed amendments to said findings, it is now ordered that the approval of the court to said findings and decree is hereby withdrawn; that the said findings and decree be stricken from the file and that the same be relogged pending the filing by the plaintiff of its proposed amendments and objections. [41]

[Title of District Court and Cause.]

**FINDINGS OF FACT AND CONCLUSIONS OF
LAW [42]**

The above entitled action came on regularly for trial on October 10, 1940, before the above entitled court sitting without a jury; George M. Naus, Esq., and Clarence E. Weisell, Esq., appeared on behalf of the plaintiff; Burton Mason, Esq., appeared on behalf of the defendant, and Donald R. Richberg, Esq., and Eugene M. Prince, Esq., appeared on behalf of the intervener. Oral and documentary evidence was introduced and thereafter briefs were filed with the court. On March 31, 1941, the cause was submitted to the court for decision.

The court having fully considered all the evidence and briefs and having heretofore on April 30, 1941, announced its decision, now makes the following:

FINDINGS OF FACT

1. Defendant is and at all times herein mentioned was a common carrier by railroad, engaged in the transportation of passengers and property in, through and between the states of Oregon, California, Arizona, New Mexico, Texas, Nevada and Utah.

2. Part of defendant's lines is and was at all said times a separate operating unit called "Pacific Lines," with termini at Portland, Oregon, and San Francisco, California, Ogden, Utah, and El Paso, Texas.

3. At all times herein mentioned plaintiff was and is now a voluntary unincorporated labor association organized under the authority of the Grand International Brotherhood of Locomotive Engineers (hereinafter called the Engineers' Brotherhood); intervener was and is now a voluntary unincorporated labor association organized under the authority of The Brotherhood of [43] Locomotive Firemen and Enginemen (hereinafter called the Firemen's Brotherhood); both said brotherhoods were and are now likewise voluntary unincorporated labor associations, members of which are and at all said times have been employed as locomotive firemen and engineers on the railroads of the United States and Canada, including said Pacific Lines. Said brotherhoods have, respectively, total memberships of approximately 60,000 (Engineers) and 85,000 (Firemen). The memberships of the brotherhoods overlap; most enginemen belong to one or the other, some belong to both, and a few to neither.

4. (a) There are and continuously for many years have been a craft or class of locomotive engineers and a craft or class of locomotive firemen in the service of defendant on said Pacific Lines, which crafts or classes ever since the enactment of the Railway Labor Act have been and are now recognized by defendant as crafts or classes of employees of defendant within the meaning of said Act. Plaintiff is and ever since the enactment of the Railway Labor Act has been the representative, for purposes of collective bargaining and agreement,

selected by a majority of the class or craft of locomotive engineers on Pacific Lines. Intervener is and ever since the enactment of said Act has been the representative, for purposes of collective bargaining and agreement, selected by a majority of the class or craft of locomotive firemen on said Pacific Lines.

(b) The craft of engineers is, generally speaking and as a group, the higher paid and older in point of service of said two crafts. Individuals in both crafts are paid for service on the basis of hours served or miles run, either actual or constructive, or a combination of both hours and [44] miles, whichever results in the greater payment. Such wage payments are made pursuant to and are governed by specific provisions of the agreements referred to in paragraph 5 hereof.

5. For many years before the passage of said Act and ever since, agreements have been negotiated from time to time between plaintiff and defendant and between defendant and intervener concerning rates of pay, rules, and working conditions of said crafts of engineers and firemen. The last of said agreements between plaintiff and defendant was made in writing, effective January 9, 1931, and has been continuously in effect ever since, with occasional amendments and additions; said agreement is hereinafter called the Engineers' Agreement. The last of said agreements between defendant and intervener was made in writing, effective as to rates of

pay October 1, 1937, and as to rules June 1, 1939, and has been continuously in effect ever since, with occasional amendments and additions; said agreement is hereinafter called the Firemen's Agreement.

6. (a) In locomotive employment, there are and continuously for many years have been constant changes in the duties and status of the engine employees and a constant ebb and flow between the craft of engineers and firemen. The number of engineers in defendant's service varies and has varied continuously with fluctuations in volume of traffic, seasonal and otherwise, and the number of firemen in defendant's service varies and has varied continuously for the same reasons. When the volume of defendant's business increases, furloughed engineers and qualified firemen are called to service as engineers. When traffic declines, engineers are demoted and almost all of them displace firemen; firemen so displaced in turn displace other firemen their juniors on the firemen's [45] seniority list and firemen with the least seniority are released from work.

(b) When additional locomotive engineers are required on Pacific Lines, they are largely obtained from the ranks of qualified firemen, and such firemen are generally advanced to service as engineers in the order of their seniority as firemen. Firemen are required to qualify for service as engineers and to accept promotion when an opening occurs.

(c) As of January 1, 1940, there were 2,343 employees of defendant on the seniority list of en-

gineers for Pacific Lines, of whom 1,654 were actually employed as engineers and 497 were actually employed as firemen. On that day approximately one fifth of the firemen employed had been demoted from the engineers' working list, and at the time of their demotion had displaced firemen their juniors. As of July 1, 1940, there were 2,307 employees of defendant on the seniority list of engineers for Pacific Lines, of whom 1,736 were actually employed as engineers and 326 were actually employed as firemen. On that day approximately one seventh of the firemen employed had been demoted from the engineer's working list and at the time of their demotion had displaced firemen their juniors.

7. (a) In the operation of Pacific Lines, there arise individual claims and grievance cases, involving disputes between individual employees and defendant as to their respective rights under the agreements referred to in paragraph 5 and as to matters not covered by said agreements. It is and ever since long prior to the enactment of the Railway Labor Act has been the custom for an engine-man who has an individual claim arising out of any such dispute, and who desires the Firemen's or Engineers' Brotherhood (or other representative) to [46] represent him in presenting and handling to conclusion the claim against defendant, to select whichever brotherhood (or other representative) he desires. In such cases a claimant engineman is not and never has been required to choose as his rep-

representative the brotherhood or labor organization selected as a representative for collective bargaining by the majority of employees in the service in which the claimant was employed when the dispute arose.

(b) The usual manner of handling such individual claims is and since long prior to the enactment of the Railway Labor Act continuously has been for the claimant to select as his representative the brotherhood of which he is a member, regardless of the craft or class in which he was employed when the dispute arose. In a limited number of cases, the claimant presents or has presented his claim to defendant directly and without representation, or he selects or has selected another organization or individual to represent him. Such presentation and handling to conclusion of a claim by the individual directly concerned, or a representative other than the brotherhood to which claimant belongs, is within the scope and meaning of the "usual manner of handling." When a claim, after initial presentation to defendant, is handled further with defendant's officers, or subsequently presented to the National Railroad Adjustment Board, it is usually handled by the same brotherhood (or other representative selected by the claimant) as presented the the claim to defendant.

(c) On almost every railroad in the United States, all individual claims, grievances and disputes of enginemen against their employers, whether within the scope of a collective bargaining

agreement or not, and whether involving rights arising from such agreement or not, are and from a date long prior to the passage of the Railway Labor Act have been handled in the manner [47] hereinabove set forth as applicable to defendant's Pacific Lines, and such was at all said times and is now the usual manner of handling such claims.

8. At all times herein mentioned the Engineers' Brotherhood and Firemen's Brotherhood have been and now are in competition for members. If members of the Firemen's Brotherhood were required to present their individual claims and grievances arising from service as engineers through the Engineers' Brotherhood, that fact would discourage membership in the Firemen's Brotherhood and encourage membership in the Engineers' Brotherhood. The presentation of such claims and grievances through the Firemen's Brotherhood, or other representatives chosen by the individual claimant, does not affect or alter the Engineers' Agreement referred to in paragraph 5 or other collective bargaining agreement, or infringe any right of plaintiff as representative of the craft or class of engineers.

9. Section 1 of Article 51 of said Firemen's Agreement (which provides for the right of individual representation in claim and grievance cases) was based upon a similar provision in the agreement between defendant and intervener, dated May 1, 1929, which was based upon a practically identical provision in subsection (a) of Article VII of the agreement called "Chicago Joint Agreement."

dated May 17, 1913, between the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen. A substantially similar provision has since appeared in all contracts of each brotherhood, or the agencies thereof, with defendant. Neither plaintiff nor the Engineers' Brotherhood protested the inclusion of such provisions in any agreement between defendant and intervener until early in the year 1939.

10. The so-called mileage provisions of the Firemen's Agreement which are mentioned in the complaint, are provisions [48] concerning which it is competent for intervener to bargain and contract with defendant. By reason of the conditions of their employment, the craft of firemen represented on defendant's lines by intervener has a direct interest in the conditions under which firemen may become engineers or engineers may displace firemen. For many years before and at all times since the passage of the Railway Labor Act, said Firemen's Brotherhood, through its appropriate agencies, has bargained and made contracts with various rail carriers, including defendant, with respect to the same subject matter as is covered by the provisions of the Firemen's Agreement quoted in the complaint. Said Firemen's Agreement was, in effect, a revision and consolidation of pre-existing agreements theretofore entered into between defendant and intervener, all of which were made with the full knowledge of the Engineers' Brotherhood and plaintiff and without protest from them.

11. (a) The provisions of Article 43, sections 1, 2, 3, 4, and 6, and the Addendum to Article 43, Application of Mileage Regulations to Part-Time Men, of the Firemen's Agreement, were and are intended to set forth conditions upon which an engineer has the privilege of displacing a fireman and of continuing such displacement. None of said provisions was or is intended to or does regulate the craft of engineers apart from the privilege of a member of that craft to displace a fireman, or prevent the craft of engineers from contracting with the defendant as to different maximum or minimum miles or hours.

(b) Article 32, section 6, of the Engineers' Agreement was and is intended to regulate the displacement of firemen. [49]

12. (a) Provisions similar in effect to Article 43 of the Firemen's Agreement and to Article 32, section 6, of the Engineers' Agreement are and were, prior to May 17, 1913, and ever since, to be found in engineers' and firemen's agreements with practically every railroad in the United States. The mileage provisions of the Engineers' and Firemen's Agreements are and since December 1, 1918, have been substantially identical. On Pacific Lines and almost every railroad in the United States, the firemen's and engineers' rules governing the demotion of engineers and displacement of firemen are and have been since May 17, 1913, substantially identical.

(b) On Pacific Lines the privilege of demoted engineers to displace firemen their juniors on the

firemen's seniority list was first created by agreement between defendant and intervener on March 18, 1908.

13. The Addendum to Article 43 of the Firemen's Agreement is a true statement of all facts and representations therein recited, and its provisions were suggested by a chairman of the National Mediation Board. That portion of the Addendum alleged by plaintiff to be unlawful was not intended to be a regulation, but was intended as an illustration.

14. The Questions and Answers under Article 37, section 15, of the Firemen's Agreement were and are intended and reasonably calculated to protect the craft of firemen in their rights under said section and have a reasonable relation to the firemen's seniority rules.

15. At and before and at all times since the enactment of the Railway Labor Act in 1926, the custom on most railroads of the United States has been and is now for the employer to bargain collectively with its employees by crafts; [50] the custom on said railroads was at all said times and is now that such class or craft representative be the organization chosen by the majority of the employees in said craft.

16. All portions of Article 43 of the Firemen's Agreement quoted in the complaint, with the exception of the last three paragraphs of section 4 (commencing with "On road extra list"), are the substantial equivalent of provisions of the agreement

between defendant and intervener, dated May 1, 1929. The first paragraph of section 1 of said Article 43 is the substantial equivalent of section 36 (a) of the agreement between the Firemen's Brotherhood and defendant, dated May 16, 1910, and all the provisions of said Article 43 quoted in the complaint, with the exception of the last three paragraphs of section 4 thereof, appeared in substantially the same form in Article XI of said Chicago Joint Agreement, dated May 17, 1913. Said last three paragraphs of section 4 are the equivalent in substance of an agreement between defendant and intervener, dated October 31, 1930.

That portion of section 15 of Article 37 in the Firemen's Agreement which is set forth in paragraph 9 of the complaint is the precise equivalent of an agreement made between intervener and defendant, dated December 3, 1935.

The Addendum to Article 43: Application of Mileage Regulations to Part-Time Men, quoted in paragraph 9 of the complaint, and being excerpts from a letter of November 30, 1934, as therein stated, is the substance of an agreement entered into between defendant, plaintiff and intervener dated May 4, 1937, which was later incorporated into the said Firemen's Agreement effective June 1, 1939.

17. There is an actual controversy between plaintiff [51] and defendant and between plaintiff and intervener as to matters set forth in the pleadings

of the parties and intervener, including controversy as to the validity of Article 51, section 1, Article 43, section 1 to section 4, inclusive, and section 6, Article 37, section 15, Questions and Answers (a) and (b), and Addendum to Article 43, Application of Mileage Regulations to Part-Time Men, all as set forth in said Firemen's Agreement referred to in paragraph 5 of these findings.

From the foregoing Findings of Fact, the court makes the following

CONCLUSIONS OF LAW

1. This action involves laws regulating interstate commerce; this court has jurisdiction, and the case is a proper one for the declaration, as herein set forth, of the rights and other legal relations of the parties.

2. The Firemen's Brotherhood (including its agencies, including intervener) is not precluded by the Railway Labor Act, or otherwise, from representing, and it has the lawful right to represent, its own members and any other individuals who desire its services in presenting any type or class of individual claim or grievance against defendant arising out of any engine employment, including employment as engineer, and the Firemen's Brotherhood (including its said agencies) has the lawful right to handle such claims and grievances to a conclusion, and the Engineers' Brotherhood does not have the sole or any right of representation in any such cases against the will of the individual claimant.

3. (a) Article 43, sections 1, 2, 3, 4, and 6, and Addendum to Article 43, Application of Mileage Regulations to Part-Time Men, are conditions under which engineers may [52] exercise the privilege of displacing firemen and of continuing such displacement.

(b) The Questions and Answers, appended to Article 37, section 15, of the Firemen's Agreement, are reasonably necessary for the purpose of protecting the craft of firemen in the exercise of the rights provided for in said Article 37, section 15, and have a reasonable relation to the firemen's seniority rules.

4. The provisions of the Firemen's Agreement referred to in paragraph 3 of these conclusions are within and affect the jurisdiction and powers of the Firemen's Brotherhood.

5. Defendant and intervener are entitled to judgment that:

(a) Intervener has the lawful right to represent members of the Firemen's Brotherhood and any other individuals who desire its services, in presenting any type or class of individual claims or grievances against defendant arising out of engine employment, including employment as engineer, and intervener has the lawful right to handle such claims and grievances to a conclusion, and plaintiff does not have the sole or any right of representation in any such cases against the will of the individual claimant.

(b) Article 51, section 1, Article 43, sections 1, 2, 3, 4, and 6, Addendum to Article 43, Application of Mileage Regulations to Part-Time Men, and Article 37, section 15, Questions and Answers, of the Firemen's Agreement, are, and each and every part of each and every one of them is, valid, and they do not nor does any of them violate either the Railway Labor Act or any other law or infringe any right of the Engineers' Brotherhood or of plaintiff.

(c) Defendant and intervener recover their costs from [53] plaintiff.

Let judgment be entered accordingly.

Done in open court this 1st day of August, 1941.

HAROLD LOUDERBACK

United States District Judge

Receipt of service.

[Endorsed]: Filed Aug. 1, 1941. [54]

In the District Court of the United States for
the Northern District of California, Southern
Division

No. 21,301-L

**GENERAL COMMITTEE OF ADJUSTMENT
OF THE BROTHERHOOD OF LOCOMO-
TIVE ENGINEERS FOR THE PACIFIC
LINES OF SOUTHERN PACIFIC COM-
PANY**, an unincorporated association,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY,

a corporation,

Defendant,

**GENERAL GRIEVANCE COMMITTEE OF
THE BROTHERHOOD OF LOCOMOTIVE
FIREMEN AND ENGINEMEN**, an unincor-
porated association,

Intervener.

DECREE

This cause came on to be heard at this term and was [55] argued by counsel, and, upon consideration thereof, it was ordered, adjudged, and decreed as follows:

a. Intervenor has the lawful right to represent members of the Brotherhood of Locomotive Firemen and Enginemen, and any other individuals who desire its services, in presenting any type or

class of individual claims or grievances against defendant arising out of engine employment, including employment as engineer, and intervenor has the lawful right to handle such claims and grievances to a conclusion, and plaintiff does not have the sole, or any, right of representation in any such cases against the will of the individual claimant.

b. The following provisions in that certain contract, called "Firemen's Agreement," between defendant and Brotherhood of Locomotive Firemen and Enginemen, effective as to rates of pay, October 1, 1937, and as to rules, June 1, 1939, namely,

Article 51, section 1;

Article 43, sections 1, 2; 3, 4, and 6;

Addendum to Article 43: Application of Mileage Regulations to Part-Time Men; and

Article 37, section 15, Questions and Answers;

are, and each and every part of each and every one of them is, valid, and they do not, nor does any of them, violate the Railway Labor Act, or any other law, or infringe any right of plaintiff.

c. Defendant and intervenor recover of and from plaintiff their costs herein in the sum of \$72.90.

Dated: August 1st, 1941.

HAROLD LOUDERBACK

United States District Judge

Receipt of service.

[Endorsed]: Filed Aug. 1, 1941. [56]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the above-named plaintiff hereby appeals to the Circuit Court of Appeals, Ninth Circuit, from the final judgment and decree entered against it in this action on August 1, 1941, based upon findings rendered and filed on that [57] day, and from the whole of said judgment and decree:

GEO. M. NAUS

Attorney for Plaintiff

HORN, WEISELL, McLAUGHLIN &
LYBARGER

By CLARENCE E. WEISELL

Of Counsel for Plaintiff

[Endorsed]: Filed Oct. 27, 1941. [58]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

The above-named plaintiff, appellant in this action, designates for inclusion in the record on appeal the complete record and all the proceedings and evidence in the action to-wit:

1. The complaint;
2. The answer of defendant; [59]
3. The answer of intervener;
4. The findings;

5. The final judgment or decree entered on August, 1941;
6. The whole of the stenographic reporter's transcript of the evidence and proceedings at the trial;
7. All minutes made by the clerk;
8. A transcript of the page of the civil docket relating to this action;
9. The notice of appeal, with date of filing;
10. Order for transmission of original exhibits;
11. Stipulation re transcript and cost bond;
12. This designation.

Pursuant to Rule 75(g) of the Rules of Civil Procedure, the Clerk of the District Court is hereby requested to transmit to the Clerk of the appellate court a true copy of the matter designated by the parties.

GEO. M. NAUS

Attorney for Plaintiff

HORN, WEISELL, McLAUGHLIN &
LYBARGER

By CLARENCE E. WEISELL
Of Counsel for Plaintiff

Receipt of service.

[Endorsed]: Filed Oct. 27, 1941. [60]

[Title of District Court and Cause.]

**ORDER FOR TRANSMISSION OF
ORIGINAL EXHIBITS**

Upon request of the hereinafter consenting signatories:

The Court being of opinion that all of the exhibits received or marked at the trial of this action should be inspected by the appellate court and sent to the appellate court in lieu of copies pursuant to Rule 75(i) of the Rules of Civil Procedure, [61] if is

Ordered that the Clerk of this District Court forward said exhibits to the Clerk of the United States Circuit Court of Appeals, Ninth Circuit, to be held by the latter clerk for the use of the appellate court until the decision of the appellate court on the appeal from the judgment taken by the plaintiff.

HAROLD LOUDERBACK

United States District Judge

By consent.

GEO. M. NAUS

Attorney for Plaintiff

C. W. DURBROW—per A. G. GOODRICH

HENLEY C. BOOTH per A. G. GOODRICH

BURTON MASON per A. G. GOODRICH

Attorneys for Defendant

DONALD RICHBERG

EUGENE M. PRINCE

Attorneys for Intervener

[Endorsed]: Filed Oct. 27, 1941. [62]

[Title of District Court and Cause.]

**STIPULATION RE TRANSCRIPT
AND COST BOND**

In connection with the appeal taken, or about to be taken, from the final judgment and decree by the above-named plaintiff, it is stipulated:

1. The requirement of Rule 75(b) of the Rules of Civil [63] Procedure that the appellant file with its designation two copies of the reporter's transcript of the evidence or proceedings is waived, and the appellant need file no copy with its designation; instead, the one copy of the reporter's transcript filed with the clerk on October 31, 1940, (for the use of the trial judge) and which copy is still on file with the clerk, may be retained by the clerk as one copy, with the same effect as though it were filed by the appellant at this time with its designation and no other copy need be filed; it being understood that the carbon copy thereof now in possession of the appellant may be delivered to the clerk for inclusion by the latter in the certified transcript of the record to be prepared and sent by him to the Clerk of the Circuit Court of Appeals, Ninth Circuit.

2. The appellant need not give a bond for costs on appeal, the requirement of Rule 73(c) for such a bond being hereby waived.

GEO. M. NAUS

Attorney for Plaintiff

C. W. DURBROW

Per A. G. GOODRICH

HENLEY C. BOOTH

Per A. G. GOODRICH

BURTON MASON

Per A. G. GOODRICH

Attorneys for Defendant

DONALD R. RICHBERG**EUGENE M. PRINCE**

Attorneys for Intervener

[Endorsed]: Filed Oct. 27, 1941., [64]

Docket

21301-L

Title of Case

**GENERAL COMMITTEE OF ADJUSTMENT
OF THE BROTHERHOOD OF LOCOMO-
TIVE ENGINEERS FOR THE PACIFIC
LINES OF SOUTHERN PACIFIC COM-
PANY,**

vs.

**SOUTHERN PACIFIC COMPANY GENERAL
GRIEVANCE COMMITTEE OF THE
BROTHERHOOD OF LOCOMOTIVE FIRE-
MEN AND ENGINEMEN (an unincorporated
association),**

Intervener.

Court Trial Oct. 1, 1940

Attorneys

For Plaintiff: George M. Naus, Alexander Bldg.,
SF.

For declaratory relief.

For Defendant: C. W. Durbrow-Henley C. Booth,
Burton Mason, 65 Market St.

For Intervener: Eugene M. Prince, 225 Bush St.

| Date 1939 | Plaintiff's Account | Received | Disbursed |
|--------------|-----------------------|----------|-----------|
| 8-12 | Deposit | 10.00 | |
| 9-30 | Pd. Treas. U. S. | | 5.00 |
| 10-27 | Deposit | 5.00 | |

| Date 1939 | Defendant's Account | Received | Disbursed |
|--------------|-----------------------|----------|-----------|
| 9-27 | Deposit | 10.00 | |
| 9-28 | " | 2.00 | |
| 9-30 | Pd. Treas. U. S. | | 7.00 |
| 1941 | | | |
| 9-30 | Pd. Treas. U. S. | | 5.00 |

Abstract of Costs

To Whom Due—
Amount—

Receipts, Remarks, Etc.

J.S.5-6 [65]

| Date | 1939 | Filing—Proceedings | Clerk's Fees | | Amount Reported in Enrolment Returns |
|--------|------|--|--------------|-----------|--------------------------------------|
| | | | Plaintiff | Defendant | |
| Aug 12 | | 1. Filed Complaint Issued Summons | 5.00 | | |
| 15 | | 2. Filed Summons, ex Aug 12 | | | |
| Sept 1 | | 3. Filed Stip ex time—plead | | | |
| 15 | | 4. Filed Stip ex time—plead | | | |
| 27 | | 5. Filed Answer | | 5.00 | |
| 28 | | 6. Filed Notice of motion for leave to intervene of General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen | | 2.00 | |
| | | Lodged proposed Answer of Intervener | | | 12.00 |
| Oct 9 | | Ord petition for leave to intervene granted. | | | |
| | | 7. Filed Order permitting Intervention | | | |
| | | 8. Filed Answer of Intervener. Mailed notices to attys. | | | |
| 1940 | | | | | |
| Mar 23 | | Ord trial set for June 18 (Court) | | | |
| May 16 | | Ord case reset for Sept 4 for trial | | | |
| July 9 | | Ord case reset for trial Sept 19 Mailed Notices to Attys | | | |

Amount
Reported in
Emolument
Returns

Clerk's Fees

Plaintiff Defendant

Filing—Proceedings

Date

1940

| | |
|---------|---|
| Sept 10 | Ord case go off calendar Sept 10 & reset for court trial Oct. 1, 1940 |
| Oct 1 | Ord case con to Oct 3, 1940 for trial |
| 3 | Ord trial con to Oct 10, 1940, at Sacramento |
| 10 | Ord trial, testimony & evidence intro, con to Oct. 11 |
| 11 | Ord trial resumed, testimony & evidence intro, case submitted on briefs to be filed in 30-30-20 days, time to start running on filing with Clerk of the Reporter's transcript |
| 31 | Filed 1 vol. of Reporter's Transcript |
| Nov 25 | Ord case off J. D. Calendar |
| | 9. Filed plff's brief |
| Dec. 5 | 10 Filed stip ex time of deft & intervenor to serve and file briefs |

| Date | Filings—Proceedings | Clerk's Fee | | Amount Reported as Emolument Returns |
|---------|---|-------------|-----------|---|
| | | Plaintiff | Defendant | |
| 1911 | | | | |
| Jan 21 | 11. Filed defendant's brief | | | |
| 24 | 12. Filed intervenor's brief | | | |
| Feb 7 | 13. Filed intervenor's motion for judgment | | | |
| Mar 4 | 14. Filed stip ex time of plttf to file reply brief | | | |
| 28 | 15. Filed stip ex time of plttf to file reply brief | | | |
| Mar 31 | 16. Filed plaintiffs' reply brief | | | |
| Apr 28 | Ord case submitted | | | |
| 30 | Ord case off Jud. Conf. Calendar | | | |
| May 5 | Ord judgt entered in favor of deft & intervenor with costs upon findgs to be filed Mailed notice | | | |
| 26 | 17. Filed stip ex time of intervenor & deft to file findgs | | | |
| June 13 | 18. Filed stip ex time of intervenor & deft to file findgs | | | |
| 19 | 19. Filed stip ex time of intervenor re findgs | | | |
| 23 | Lodged findgs | | | |
| | Lc lgd decree | | | |
| | 20. Filed stip ex time of plttf re findgs | | | |

| Date | Filing—Proceedings | Clerk's Fees | | Amount Reported in Enrolment Returns |
|--------|--|--------------|-----------|--------------------------------------|
| | | Plaintiff | Defendant | |
| 1941 | | | | |
| July 3 | 21. Filed def't's findgs etc | | | |
| 22. | Filed decree in favor of def't & intervener with costs Made judgt roll Mailed notice | | | |
| 8 | Ord findgs & decree withdrawn & the same re-lodged Mailed notice | | | |
| 17 | 23. Filed stip ex time of pl'tf to propose amendments to findgs | | | |
| Aug 1 | 24. Filed findgs of fact etc | | | |
| 25. | Filed decree in favor of def't & intervener with costs Made judgt roll Mailed notice | 5.00 | | |
| 5 | 26. Filed no to tax costs & memo of costs etc | | | 5.00 |
| Oct 27 | 27. Filed pl'tf's notice of appeal | 5.00 | | |
| 28. | Filed designation of record on appeal | | | |
| 29. | Filed stipulation re transcript & cost bond | | | |
| 30. | Filed ord for transmission of original exhibits | | | |

District Court of the United States
Northern District of California

**CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing pages, numbered from 1 to 66, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case entitled General Committee of Adjustment of the Brotherhood etc. Plaintiff, vs. Southern Pacific Co., Defendant, General Grievance Committee of the Brotherhood of Locomotive Firemen etc. Intervener. No. 21301-L, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of seven-dollars and twenty-five cents (\$7.25) and that the said amount has been paid to me by the Attorney for the appellant herein.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 5th day of December A. D. 1941.

(Seal)

WALTER B. MALING,
Clerk.

WM. J. CROSBY,
Deputy Clerk. [67]

[Title of District Court and Cause.]

TESTIMONY

Thursday, October 10, 1940.

10:00 o'clock A.M.

Counsel Appearing:

For Plaintiff:

GEORGE M. NAUS, Esq.,

CLARENCE E. WEISELL, Esq.

For Defendant:

BURTON MASON, Esq.

For Intervener:

DONALD R. RICHBERG, Esq.,

EUGENE M. PRINCE, Esq.

The Court: Proceed with the calendar, Mr. Clerk.

The Clerk: General Committee of Adjustment vs. Southern Pacific.

Mr. Naus: The Plaintiff is ready.

Mr. Mason: The defendant is ready.

Mr. Richberg: The intervener is ready.

The Court: All sides are ready. You may proceed, then, [1*] gentlemen.

Mr. Naus: If the Court please, it has been thought by counsel that out of an abundance of caution, although recognizing that the new rules probably do not require a formal jury waiver, with

*Page numbering appearing at top of page of original Reporter's Transcript.

the permission of the Court we would like to join in an express waiver of a jury, and ask that the Clerk enter the waiver in the minutes.

Mr. Mason: That is correct, your Honor.

The Court: If that is satisfactory, let it be entered.

Mr. Naus: At this time, if the Court please, I ask permission to have seated with me at the counsel table, first, Mr. P. O. Peterson, the Chairman of the Plaintiff Association, who perhaps could be considered a party, and also, the only additional one, Mr. G. W. Laughlin, who is First Assistant Grand Chief of the Brotherhood of Locomotive Engineers. I gave his name and title to the Clerk.

The Court: There is no objection to their appearing at the table; is there?

Mr. Mason: No, not at all, your Honor. I should like, on behalf of the Defendant to have permission to have seated with me Mr. C. M. Buckley, who is Assistant Manager of Personnel of the Defendant Company.

Mr. Richberg: If your Honor please, I would like to have permission to ask Mr. D. B. Robertson, who is President of the Brotherhood of Locomotive Firemen and Enginemen, and Mr. C. W. Moffitt, who is General Chairman of the Southern Pacific.

The Court: If there is no objection, they may be seated at the counsel table.

Mr. Naus: There is no objection. May I ask also that Mr. Walter Jones, Vice-President of the organization, be permitted to [2] sit at counsel table?

The Court: The same rule will be made.

OPENING STATEMENT ON BEHALF OF
PLAINTIFF,

By George M. Naus, Esq.

Mr. Naus: Now, if the Court please, I shall make a very brief opening statement, mainly for the purpose of getting before the Court what I deem the somewhat limited issues here, and with your Honor's indulgence, I would like to call attention to two or three very short portions of the statute involved, so that it will help explain the matter of the pleading.

In the first place, this is a suit for a declaration under the Declaratory Judgment Act of Congress to declare the rights and other legal relations of the parties involved, here. It is a suit that was brought by the plaintiff, General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southern Pacific Company, which is an unincorporated association, and was brought primarily against the Southern Pacific Company as the defendant. By permission of Court, and without objection, the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen have come in and intervened. So we have those three parties before us.

The suit seeks a declaration under what is known as the Railway Labor Act, an Act of Congress originally enacted in 1926, and amended in some particulars in 1934, and the declaration is sought under the Railway Labor Act as amended in 1934. Your Honor will find in the first numbered paragraph of the complaint a citation to the statute involved. The Railway Labor Act is found in 45 U. S. Code— if your Honor has not your copy of the Code convenient, I have an extra copy here, if you desire.

The Court: I can have it secured. 45 what? [3]

Mr. Naus: 45 United States Code, Section 151 and following sections, and I might say that Title 45 of that compilation has never been reprinted since the original enactment of the Code in 1925. So we find this material only in the paper supplement in the back, because it was in 1926, a year after the enactment of the Code, itself.

Now, before turning to the specific allegations of the complaint, and in order to help the Court better to understand them, I will call attention merely to some portions of the Act, itself. The Act is in several numbered sections, and several of them are broken down into a number of subdivisions. I call attention first to Section 2 of the Act, the portion that is now Section 152 of the Code. That provides, in subdivision 1:

“It shall be the duty of all carriers, their officers, agents and employees, to exert every reasonable effort to make and maintain”—

Would your Honor prefer to turn to the Code as I call attention to it?

The Court: I can do so.

Mr. Naus: It is sometimes easier to follow. Turn to Section 152 of the Title. It starts off, the subdivision:

"It shall be the duty of all carriers, their officers, agents and employees, to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

Then, if the Court please, I will turn to subdivision 3:

"Representatives"—

I pause there for a moment because this plaintiff will be found as we go along to come within the designation or definition of "representative" as it is used in the Act; likewise, [4] as to the Firemen Intervener, it will be found that that association is also the representative within the meaning of this Act.

"Representatives for the purposes of this Act shall be designated by the respective parties

without interference, influence, coercion," and so on.

In other words, a command to designate representatives.

Then I invite attention to the opening sentence of subdivision 4:

"4. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act."

I read "for the purposes of this Act," because that is the way the Act of Congress reads, but the compilers of the Code have slightly changed it to conform with the grammar of the rest of the sentence. "for the purposes of this Act."

Then I invite attention to what you will find there under Section 151, subdivision 6, the section preceding the one we have been looking at. It is a rather long section.

"6. The term 'representative' means any person or persons, labor union, organization or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them."

The Court: That is 151 straight, not 151-A?

Mr. Naus: No, 151 straight, subdivision 6.

The Court: I have it.

Mr. Naus: Then, if the Court please, I will now turn to Section 151-A, and I might add that it took that subdivision A lettering simply because it was added to the Act, to the Code in 1934, by way of amendment to the original Act, and under the Act it is really part of the amended Section 2, the subsequent portions of which appear under Section 152. 151-A tells the purposes of the Act. The purposes of the Act are 1, 2, 3, 4, [5] and 5, defining the purposes of the Act, and I simply call attention to that because elsewhere in the Act it speaks of the purposes of the Act. That, if the Court please, in general is the essential portions of the statute to which I wish to call attention before turning to the complaint, and I wish to refrain from arguing the point now, of course, having simply called it to your Honor's attention.

Now, turning to the complaint, paragraph 1 consists of the formal or jurisdictional allegations. In the first instance, this is not the ordinary case of a Federal question, or a question of citizenship, but arises under the eighth subdivision of Section 41 of 28 U.S.C., the one conferring jurisdiction, and it is before your Honor under Federal jurisdiction because Congress has given jurisdiction over any action under a law regulating commerce, as this one does, to this Court.

Next the complaint refers to the Railway Labor Act, and finally there is cited there as part of the formal allegation the Declaratory Judgment Statute.

Paragraph 2 is descriptive of the Southern Pacific for purposes of this case, that is to say, the Pacific Lines, and I think all will agree that it clearly brings it within the definition of a carrier within the Act.

Then in Paragraph 3 we begin to get into or approach the charging part.

“There is, and continuously for many decades”—

The counter pleadings or defense pleadings here deny “decades”, or, rather, state “years”. It is unimportant which it is. I think all will agree that whatever is referred to in the paragraph has been in effect ever since the Railway Labor Act was enacted. [6]

“There is, and continuously for many decades”—or “years”—there has been, a craft or class of locomotive engineers, now numbering approximately 1500 employees, in the service of Defendant as such carrier on and throughout said Pacific Lines,” and so on.

Then beginning on line 16 there is an allegation there that at least 85 per cent. of all of said locomotive engineers—that is, on the Southern Pacific Pacific Lines—

“comprising said craft or class on and throughout said Pacific Lines are members of the Grand

International Brotherhood of Locomotive Engineers, a voluntary unincorporated association composed of approximately 60,000 persons throughout the United States and Canada"—

And then: "Plaintiff is a voluntary association," and so on.

Now, there are some denials of portions of paragraph 3, which, when we open the evidence, I am reasonably satisfied will be taken care of, either without controversy or by stipulation.

Turning to Paragraph 4, the allegations of that paragraph are admitted on all sides:

"Plaintiff is, and ever since the enactment of said Railway Labor Act has been, the sole designated representative of said craft or class of locomotive engineers under, and for all the purposes of, said Railway Labor Act, including collective bargaining, and making and maintaining agreements with defendant concerning rates of pay, rules, and working conditions of locomotive engineers. For many years before the enactment of the Railway Labor Act, and ever since, there have been agreements negotiated from time to time between plaintiff and defendant concerning rates of pay, rules, and working conditions of said craft. The last of said agreements was made in writing, effective January 9, 1931, and has been continuously in effect ever since, with occasional amendments and additions."

Next, if the Court please, we come to Paragraph 5, which is also admitted by the pleadings, and simply sets up a portion of the matter contained in the agreement of the plaintiff, in what, in the railroad parlance is known as the Engineers' Schedule.

Then Paragraph 6 comes to the matter of the Firemen's Organization. Paragraph 6 is also admitted by the pleadings. [7]

"There is, and at all times herein mentioned has been, a separate craft or class of locomotive firemen in the service of defendant, on and throughout said Pacific Lines, the designated representative of which craft or class of firemen, for the purposes of said Railway Labor Act, is an unincorporated association (hereinafter for brevity called 'said Firemen's Committee') having the common name of General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen. Said Firemen's Committee has never been the designated representative of said craft of engineers."

Then we come to Paragraph 7, portions of which are admitted and portions of which are denied, but as to which I think we will find there is no real controversy between the parties as to what the real facts are.

"Defendant recruits most of the members of its craft of locomotive engineers from the competent members of said craft of locomotive fire-

men in the order of their seniority of service. The members of the respective crafts of engineers and firemen fluctuate from time to time in correspondence with the volume of transportation business of defendant. As said volume increases, senior firemen are called to service as engineers; as it decreases, junior engineers are demoted to firemen. When employees are serving defendant as engineers, plaintiff is their designated representative under and for the purposes of the Railway Labor Act; when serving defendant as firemen, said Firemen's Committee is their representative."

Then we turn to Paragraph 8, some of which is admitted and some of which is denied by the pleadings, but as to which I think we will find no controversy when we come to the evidence.

"Said craft of engineers represented by plaintiff is the higher paid and older in point of service of the two crafts, as aforesaid. Both crafts are paid for service on the basis of hours served or miles run. As said volume of transportation business fluctuates, it is of economic importance to the craft of engineers represented by plaintiff that the number of members in said craft at any given time should not be so great as to spread the whole volume of work lower than an agreed amount per member of the craft. In said agreement, effective January 9, 1931, the monthly minimum of hours of service or miles run by

members of said craft of engineers has been agreed between plaintiff and defendant."

Then, if the Court please, we come to the main charging paragraph of the complaint, that is, 9, and I would say that as to the first six lines of Paragraph 9, they are denied, but, as [8] your Honor will read it, you will find, this being a declaratory judgment suit, seeking a declaration of legal relations, there is mixed in the pleadings assertions of law and denials of law. It is a peculiar type of pleading under that Act. So those first six lines, being in the nature of legal conclusion, are denied.

Following that, when we come to five or six pages of quotation from the Firemen's Schedule or Firemen's Contract, that is to say, the collective contract made between the Southern Pacific and the Firemen's Group, there is an admission of the correctness of the quotation of those extracts from the Firemen's Schedule and the denial, as I say, is in the assertion of legal conclusions or legal propositions in the opening portion.

Then, if the Court please, we come to Paragraph 10. Those perhaps might be called formal allegations essential to a suit for a declaration; that is to say, Paragraph 10 sets up the controversy between the parties. We assert so and so and they deny it. All of that is admitted, and the only denial is as to that in the nature of a legal conclusion. It is on the fifth line of the last page, page 10, after setting up the controversy that such and such conduct vio-

lates and interferes with our right, we put in the short allegation that they do so violate and interfere. That also is denied, and that, I think you will find, is in the nature of a legal conclusion.

That, if the Court please, is an outline of the case in as brief form as I can put it, and with your Honor's permission I would like to defer to the Defendant and Intervener, as a matter of courtesy, so that they may state any affirmative matter which they have thought fit to put in their pleadings.

Mr. Mason: May it please the Court, I have prepared a [9] brief opening statement for the Defendant, which will indicate the Defendant's position here, and I should like to read it with such interpolations as may be necessary. I will furnish a copy to the Reporter for his guidance.

OPENING STATEMENT FOR DEFENDANT

By Burton Mason, Esq.

Mr. Mason: From an inspection of the pleadings in this case, it becomes apparent at once that there are practically no contested issues of fact. The only matter as to which the pleadings reveal any dispute of fact relates to the number of locomotive engineers in the employ of the defendant railroad company; and the parties have agreed to accept the figures prepared from the company's records, and presented here by a witness for the company, as correct upon that issue. The essential issues are

therefore purely legal issues, arising from undisputed facts.

The parties in interest before the Court are two labor organizations, and an employer which, together with its employees, is subject to the Railway Labor Act. One of these two organizations, the plaintiff, represents the craft or class of employees of defendant designated as locomotive engineers; and that organization has entered into a collective bargaining agreement with defendant which contains provisions governing the wages, hours of work, other working conditions, and various other general incidents of the employment of engineers on defendant's lines.

The other organization, the intervenor, similarly represents the craft of locomotive firemen employed by defendant, and has entered into a corresponding agreement governing the wages and other general incidents of the employment of such firemen.

The plaintiff organization properly claims the exclusive right to represent the entire craft or class of engineers for purposes of collective bargaining with defendant. The intervenor [10] claims, with equal propriety, the exclusive right to represent the craft or class of firemen for a similar purpose. Neither organization appears to challenge the other's claim in this respect; and the defendant does not challenge the claim of either.

The claim of the plaintiff, as expressed in its complaint, goes further than the claims of general representation of all the craft of engineers. Plaintiff

also claims, by paragraph 9 and paragraph 10 of its complaint that the defendant and the intervener, in having entered into the agreement covering the firemen's craft, have infringed plaintiff's exclusive right to represent engineers, because there are included in the firemen's agreement certain passages or clauses in which engineers are mentioned. These provisions in the firemen's agreement are set forth at length on pages 5, 6, 7, 8 and 9 of the complaint. Plaintiff particularly asserts that when an individual who is serving as an engineer presents an individual claim upon the defendant, arising under the rules of the engineers' working agreement—for example, a claim for additional pay under a rule of that agreement asserted to apply to his particular service—that claimant must be represented by plaintiff, and not by any other organization such as intervener.

The essential fact, which is developed at some length in the pleadings and will probably be fully discussed in the evidence, is that while the two crafts—engineers and firemen—are separate and distinct from the standpoint of craft representation and collective bargaining, they are not so completely distinct in so far as concerns the men who actually serve as engineers and firemen. Every fireman is potentially an engineer; and many men now serving as firemen have seniority as engineers and would be serving as such, if the traffic volume [11] were sufficient to require; while many more men, now in the ranks of firemen, are qualified as engi-

neers but do not have seniority dates as such because no need for their services as engineers appears to have arisen so far.

Many men, during the course of the calendar year or even during the same month, serve as both firemen and engineers. When traffic is heavy, and more engineers are needed, they move up in accordance with their seniority as engineers; but when traffic falls off, they are cut off, as the saying goes; and they then revert to firing service.

Generally, men are sent up, that is, promoted to engineers at the request of the company when it finds more are needed. They are cut off, that is, demoted to firemen, when the Local Chairman of the Engineers' Organization so demands upon finding that the average earnings of the group are falling below a prescribed standard.

It is this continuous back and forth movement of the men in the two crafts, from one to the other, that really lies at the bottom of the dispute in this case. An individual is today an engineer, working under the engineers' agreement; and his right to work, his rate of pay, and all the other incidents of his employment, including the limitations if any upon the total earnings he may accumulate, are determined by the engineers' agreement. But tomorrow that same individual may be cut off as an engineer. If he wishes to work, he can do so only as a fireman. Then the conditions governing his rights, wages, etc., will all be determined by the firemen's agreement.

The clash of interest, as between the two organizations, arises because of two things. First, the individual whose case we are discussing is probably a member of one or the other or- [12] ganization. If he is a member of the firemen's organization, he naturally wants that organization to handle for him any individual claim or dispute he may have with his employer, whether the dispute concerns his service as engineer or fireman. As stated above, however, plaintiff claims that he cannot in such a case be represented, except by plaintiff, if the claim or dispute is based upon his service as an engineer; and plaintiff particularly asserts that the contrary provision, found in Article 51, Paragraph 1, of the firemen's agreement (quoted on page 5 of the complaint) which permits an engineer to be represented by the firemen's organization in the handling of such an individual claim is an unlawful infringement. Both defendant and intervener take a position opposite to plaintiff in this regard.

The second cause for the clash of interest between the organizations arises as follows: The individual whose case we are discussing can revert to firing service, when cut off as an engineer, only because of a right to do so preserved for him by agreement. That right permits him to become a senior fireman, and therefore involves the displacement of some other fireman his junior. It can be exercised only if certain prescribed conditions are satisfied. Since the firemen, through the intervener as their chosen representative, admittedly have the exclusive right to

negotiate and agree upon the conditions under which anyone may qualify for and enter service as a fireman, those conditions to be effective must and do appear in the firemen's agreement.

The most important condition attached to the right of displacement upon demotion is of course that the demoted man who is sent back firing no longer has a chance to make adequate earnings as an engineer. [13] The firemen's agreement therefore states at what level of earnings among those serving as engineers a junior engineer may be cut off and become immediately eligible to step in as a senior fireman; and correspondingly, at what level of earnings among the engineers the junior engineer who has thus been demoted is no longer eligible to continue as a fireman, but must again be promoted to engineer service. If these conditions were not expressed in the firemen's agreement, then the engineers by changing the earnings level at which men might be cut off or retained could force men into the firemen's ranks, and keep them there, without the firemen or their representatives being able to take any steps at all to protect or preserve the working conditions of their own craft.

The plaintiff contends, nevertheless, that in having embodied in the firemen's agreement the conditions under which a man may revert to and remain a senior fireman instead of continuing to serve as a junior engineer, the employer and the firemen's organization, as the parties to that agreement, have undertaken to prescribe the conditions under which

the man may become and continue as an engineer, and have thus infringed plaintiff's exclusive right to bargain collectively for engineers.

As we shall show, this contention depends upon a confusion of two situations: one created by the engineers' agreement, the other by the firemen's agreement; and upon the assumption that a cut-off engineer becomes eligible as a fireman at once. It is quite correct that the engineers' agreement may and should determine when and how men may be cut off or added to the engineers' active list; at what levels of earnings, additions or demotions shall be made. The firemen's agreement determines only when and how the men who are cut off as engineers may become firemen. Conceivably, a man might be cut off as an engineer, because the average earnings of his group were down to what the engineers' representative considered inadequate; yet this man might not be able to become a senior fireman with right of displacement, because the conditions of the firemen's agreement were not satisfied. This could easily occur if the engineers chose to cut men off when the average earnings fell below the equivalent of 3,000 miles per month, for example; while the firemen refused to readmit such cut off men to their own ranks, unless the average of the group of engineers fell below 2600 miles per month. The fact is that unless the two working agreements were and continued to be identical in this respect, a junior engineer could be cut off as an engineer, but still be ineligible to go back firing.

The defendant, as the employer, is of course an interested and necessary party here, because: (1) it is a party to both working agreements, and believes that both are lawful; (2) it wants to continue to deal with these organizations, so long as they are the craft representatives, and the representatives of the individuals comprising their membership, in accordance with the requirements of the Railway Labor Act. It must perform its public obligation as a common carrier, and operate its trains and engines with enginemen who are fully and properly qualified for that service; and it obtains these men from the membership, largely, of the two organizations involved in the case. For its own protection, defendant must know with certainty how and when men for engine service may be called to protect that service, and who is their lawful representative in determining the conditions under which they may be called and required to report. [15]

OPENING STATEMENT FOR INTERVENER.

By Donald R. Richberg, Esq.

Mr. Richberg: May it please your Honor, in behalf of the Intervener in this case, I would like to endeavor to make perhaps a little clearer the issues which are presented here. Now, there is no real issue as to any vital facts in this case. I think your Honor will have observed from the statement of Counsel for the Plaintiff and Counsel for the De-

fendant Railroad an agreement upon that point. Although there are certain denials in the answer of the Railroad and in the answer of the Intervenor, they concern either denials of allegations that are essentially conclusions or declarations of right or denials of fact that are not material to the final determination of the issues here. Your Honor is presented with practically pure issues of law, not encumbered with any real vital issues of fact, and for that reason I think perhaps a proper part of a statement at this time should be to endeavor to make clear just what those issues of law are. I may say that testimony is of use in this case only perhaps for these purposes. It may help to make clear the meaning of the allegations of the complaint to have testimony showing the practical operating conditions on the railway that produced this particular dispute. It may also help to make clear the meaning of the Railway Labor Act, which your Honor is called upon to construe, and that is perhaps particularly essential in this case because the Act, itself, was drawn up by practical operating men, representatives of the employees and executives of the railroads. It was passed by the Congress at their request as a joint effort to provide machinery for settling disputes, and contains a few terms that might be somewhat ambiguous, or at least not easily understood, unless there were some evidence [16] presenting the normal course of railroad practice.

For example, in one section of the Act it is provided grievances shall be handled in the usual manner. Now, it is known to railroad men what that is, but on the face of the statement, it may not be clear as to what the usual manner is. So for that reason it would seem desirable not to attempt to have this case determined entirely upon the pleadings, and yet, as it does involve issues of law not affected by any issues of fact, we believe it is appropriate to make a motion for judgment on the pleadings, but without asking the Court to pass upon that motion. Perhaps formal making of it might be deferred until after presenting the evidence, but I thought we should at least present it at the present time to indicate clearly our position, which is that this particular proceeding could be decided entirely upon the pleadings, and essentially I think your Honor will find that is where your judgment comes from rather than from any evidence, which will simply clarify, perhaps, the pleadings and the statute.

Now, as to the previous statements, if I may be permitted, I would like to summarize what they amount to, because we have no disagreement with what has been presented here as to the issues before the Court. It is conceded by all parties here that the Engineers' Organization represents the engineers as a craft or class. They have made the contract on this railroad governing engineering service, and it is accepted that they had the right to make that contract. It is also conceded that the Firemen's Organization represents the firemen as a craft or class, and they have made the contract with the Railroad on that

basis, and it is conceded that they have the right to make that contract. When I say they have a right to, I refer and call [17] your attention to the section of the Railway Labor Act, which was brought into the Act admittedly by the amendment of 1934, although the principle was in the Act before that, which will be found in that section of the Act which was the second section of the original Act, and now appears as 152 in the Code. If you turn to the fourth clause, to which counsel for the Plaintiff referred, you will see the second sentence reads as follows:

“The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter.”

Now, that follows on the sentence providing:

“Employees shall have the right to organize and bargain collectively through representatives of their own choosing.”

And that makes important the admission which I have just made, which is admitted by all parties, the concession that there is no dispute as to who are the representatives of the craft of firemen and the craft of engineers in this case. The Engineers' Organization is representative of the engineers' craft or class; the Firemen's Organization is representative of the firemen's craft or class. What the difficulty in this case arises out of is that which has been referred to by Mr. Mason. There is a field of labor

relations in which both the engineers and the firemen are interested, because of the fact that the firemen go up as traffic increases and opportunities for promotion are provided, and as traffic decreases and there are reductions in force, the engineers go down. In the terminology used, they bump off the senior fireman; that is, they are permitted to displace the senior fireman, and then the senior fireman displaces the man below him, and so they bump down the entire group of firemen so that as a result, at the end of it, some fireman who had a job no longer has a job. [18]

That is a provision which has come into the agreements between the Railroads and the Organizations and been effective for a long time. We shall show your Honor that the privilege of an engineer **to be demoted and to take the place of a fireman, to take a fireman's job, to eliminate firemen from their jobs**—in other words, that very large privilege and advantage to the engineers which gives them an extraordinary protection to their employment—is one which was granted by the Firemen's Organization and not one which the engineers obtained or could have obtained for themselves, because the determination of who should be a fireman and under what conditions would rest in the contract between the Firemen and the Railroad. Then the evidence will show that as far back as 1907 the Firemen, in their agreements, began to write in provisions permitting engineers to come down when there were

reductions of service, to bump off the firemen, take the firemen's jobs, and push firemen out of employment. That was a matter that was contained in the Firemen's contract for more than twenty years, and I think the evidence will show that it was never written into the Engineers' contract at all until in very recent years. It has been written recently into both contracts, into the Firemen's contract and into the Engineers' contract, and the extraordinary issue presented in this case is that the Railroad Engineers, who have had the privilege all these years, granted by the Firemen to the Engineers, are now claiming the privilege as a right, and are claiming the Firemen have no right to contract as to who shall take their jobs and under what conditions. That is the real issue in this case on that point.

There is another issue in this case which is on the question of representation, and that is one which I can deal with very, [19] very briefly. It is the claim of the Engineers in their complaint, which I can put in simple words outside the formal language of the complaint, that any man who is serving as an engineer who has a grievance must be represented in that grievance by the Engineers' Organization, although he may not be a member of the Engineers and he may be a member of the Firemen's Organization. They claim any grievance which arises under the Engineers' contract or a matter of engineering service the individual, the single employee, although he may not be a member of the Engineers.

Organization, must accept representation from the Engineers' Organization in the handling of his grievance, and the Firemen will not be permitted to contract with the Railroad that they can represent their own members when they happen to be running as engineers.

In order to explain how that controversy arises, I may point out that this is one of the rare instances in labor relations where we have duplications of membership, and one of the reasons for that is the very fact that firemen go up to become engineers and engineers go down to become firemen. The Firemen's Organization is naturally one of the things they are interested in first, because they start as firemen. When they are through with their firing service, are promoted as engineers, they may become members of the Engineers' Organization. But your Honor will see that over a long period, ten or fifteen years or more, they may have only a little engineering service and be most of the time firing. Furthermore, they have insurance in the Firemen's Organization. For which many reasons could be given, many members in the Firemen's Organization prefer to retain their membership and not become members of the Engineers' Organization. On the other hand, some become members of the [20] Engineers' Organization and retain their Firemen's membership, so some are what are called "double headers": they belong to both organizations. Some of them remain members of the Firemen's Organi-

zation, although they are actually serving and have been for years largely as engineers.

Now, that creates this conflict over representation, which is the second conflict which is presented as the issue in this case. There are two conflicts: one over the demotion of engineers to firemen, and the conditions under which it has to take place, and, second, the right of representation.

As I have said, on the first issue the Engineers are claiming the Firemen cannot regulate the provisions of the agreement that determines when firemen shall lose their jobs, which we think almost answers itself.

The second is this question of representation, in which the position of the plaintiff in this case is the Firemen have no right to represent their members if they are engaged in engineering service, and their grievance arises out of some operation in that service. When I say "represent them," I go back to what we said originally: No one claims that the Firemen have a right to write the Engineers' contract or the Engineers have a right to write the Firemen's contract. But after the contracts are written, the rules are laid down, and the schedules are very elaborate and involve many possibilities of misunderstanding in construction. Men are disciplined for faults. All of those amount to what are called grievance cases. A man objects to the treatment he is receiving. Perhaps he has not received the pay he thinks he ought to have. He puts in a claim for larger pay. Perhaps he thinks he has

been disciplined in a way he thinks unjust. He puts in a claim to have the discipline [21] removed. That is what we call grievance cases, and the vital question—and that is the other issue in this case—is whether a man is entitled to be represented by the organization to which he belongs when he is presenting a personal grievance, an individual claim, or whether he must be represented by the organization that has made and holds the contract with the Railroad. As to that—of course, this is no time for argument of the matter, but I want simply to state in passing that that particular issue happens to have been decided against the complainant in this case, first by the National Mediation Board, which under this law is the director and administrator of this Act, and then arising out of a strike on this Railroad—not a strike, but a strike vote—in 1937, the President created an Emergency Board consisting of two lawyers and the president of a university to hear and pass upon these grievances, the major one of which was this representation question, and that Emergency Board in 1937, sitting here in San Francisco, held unanimously against the complainant organization on the contention it is making here, and in due time we would like to present a copy of the report of that Emergency Board, because it is an administrative construction of the law by one of the bodies provided for in that law for determining the law. While it would not control the decision of a Court as to a matter of right, it certainly will help the Court in determining the ad-

ministrative construction of the law and the intent and purpose of the law. But when it comes down to precedent, we will also cite to your Honor the fact that the United States Supreme Court, which is a guiding authority, in the *Virginian Railroad Case*, in passing upon the constitutionality of the Act, has sustained the constitutionality of the Act on the very ground that it leaves open the right of the individual to re- [22] present himself, himself as an individual, or through counsel, or representative of his own choosing. That case is the *Virginian Railway Company v. Eastern Federation*, No. 40, which is found in 300 United States, 515.

The Court: What is the year?

Mr. Richberg: The October term of 1936, decided in 1937.

Mr. Naus: Decided in March, 1937. That is in 81 L. Ed., if your Honor please.

Mr. Richberg: So on that issue, if your Honor please, we haven't got the faintest idea when it comes to discussing the issue of law—we have a very serious argument to make to the Court that the very basis of the constitutionality of the *Railway Labor Act* will be questioned by establishing a right in an organization against the right of individual, against the constitutional right of the individual, the right of an organization to represent him willy-nilly and deny him the right to be represented by those of his own choosing. We do not think that is a very serious issue. The plaintiff has lost on all these occasions in which it has attempted to sustain its posi-

tion. It is against the rulings of the National Administrative Board, which is the administrator of this Act, the Emergency Board which was appointed to settle that very question on this Railroad in 1937, and finally the effect of the decision in the United States Supreme Court in the Virginian Case.

So I want to say there is very little, it seems to me, pertinent testimony to meet such a very obvious and clear issue of law. The Act, itself, specifically provides that the man is entitled to representation by representatives of his own choosing, and it is very hard to avoid the clear implication of the Act.

[23]

On this question, however, of the jurisdiction, if we may put it so, of the Engineers to control when engineers shall go down and bump off firemen against our claim that that is the Firemen's business essentially, on that question of overlapping jurisdiction I want to say we do not take the completely—well, I do not say arbitrary—but all-one-way position, completely one-sided position which the complainant takes. The complainant takes the position that the Engineers' Organization has the exclusive right to determine when engineers shall be demoted and take firemen's positions without regard to the Firemen's having anything to say about the question. We could very properly say, and we will take the position in court, that if there were any exclusive right under the Act, necessarily that ex-

clusive right would lie with the Firemen. It would not lie with the Engineers, because the Engineers, according to their own argument, are invading the field of the Firemen, and they would have to come in under the provisions of the Firemen's contract.

As Mr. Mason has attempted to state very briefly, here, your Honor, in order to make it clear, we are not questioning the right of the Engineers to fix the mileage that engineers may run as such and the earnings that engineers may make as engineers, or anything of the sort. But when we reach the provision as to engineers being demoted to firemen, it is essential to the interests of the Firemen to determine when an engineer shall be demoted and when he shall not be demoted if he is going to take away a fireman's job.

Let me put it this way: Suppose you have twenty engineers running, and instead of putting it in mileage, let us put it in terms of money. Suppose they are making, we will say, a mileage which amounts to approximately \$300 a month. Now, if [24] they in their contract are going to increase the amount that an engineer can run in mileage, and therefore the amount he could make, it might increase that amount to where the engineer was making twice his mileage, where he was making twice that amount of money—making, according to this simplified example, but it is a perfectly fair example, \$600 a month. What would be the result? Ten engineers doing the work of twenty engineers. That would mean the other ten engineers would be

out of jobs. They would go down and bump off the firemen and take the jobs of ten firemen, to which they had a right under their seniority.

Thereby, the fireman has a very great interest in whether the engineers properly divide up their work or hog it so the top senior men make the large amount of money that would give them an extraordinary or unfair earning and the other men will be thrown down to bump off firemen.

Of course, that is of interest to the Firemen. The Firemen could perfectly well say in this case, "If you want to agree with the railroad to run excessive mileage and make excessive earnings, that is your business. You may make such an agreement. But if you are making such an agreement, we will not permit the men you are displacing by hogging the work to come down and take away our jobs. We will only permit engineers who are displaced and come down to take away our jobs when the engineers' work is fairly divided among the engineers who are available. That, I say, in essence, is the position of the Firemen's Organization, that the Engineers can do as they wish in fixing the mileage or earnings, provided it affects only the engineers, but when that is the determination of the basis of which men are demoted and they come down and push the firemen [25] out of their jobs, then the Firemen say that is primarily the interest of the Firemen, and will insist on a contract with the Railroad that the demotion privilege shall be conditioned on the fact that engineers shall not be running excessive mileage and making excessive earnings.

If your Honor will turn to the complaint which is filed in this case, you will see that that is the exact language of the Firemen's Agreement which is being complained of here. On page 5 of the complaint, under Article 43, "Demotions and lost runs," is the following:

"When from any cause it becomes necessary to reduce the number of engineers on the Engineers' working list on any seniority district, those taken off may, if they so elect, displace any firemen their junior on that seniority list under the following conditions:"

In other words, all the Firemen have agreed with the Railroad is that they will permit engineers to displace firemen if engineers are running reasonable mileage and making reasonable earnings. But they do not permit by this engineers to come down and exercise their right of bumping off firemen, which the Firemen are giving them, if those engineers come down as the result of the fact that the Engineers have made an unreasonable agreement with the Railroad by which they are running unreasonable mileage and making unreasonable earnings, and then throwing the burden of their unemployment upon the firemen.

I would like, if I might, if the Court please, to make the issues in this matter as clear as possible in the opening statement, for this reason: I have been through many years of this controversy. When the Emergency Board hearing was held in San Francisco, we took days taking testimony on this ques-

tion. As a matter of economic justice and fairness, it was entirely appropriate for the Emergency Board sitting there to find out what [26] the fairness and equities of the situation were, to find out who is right and who is wrong, not from the standpoint of strict constitutional right, but from who is being fair and who is not; therefore, such testimony is reasonable. But I think any such effort in this proceeding would be entirely out of place, and that is why I thought the issues should be made clear at the outset. I think if we were to go into the equities of the situation, it would not be difficult to convince your Honor of the equity of the Firemen's position. But that is not what is brought forward in this case. What is brought forward in this case is a claim of a statutory right, an absolute right which is claimed in behalf of the complainant here. That means the complainant has got to go to some place in the law and point to something which gives the complainant that right, because there would be no such right unless it were created by statute. There is no general common law right. Any right brought forward here must be a right created by statute. Therefore, your Honor has necessarily the very narrow question of statutory construction, as to which testimony can be of no value to your Honor from the standpoint of what a witness thinks ought to be done or how he thinks the law should be written. It is a question of how the law is written, and I feel, under the circumstances, in order to protect the record and to properly play our part

in this proceeding, we should point out without unduly annoying the Court, counsel, or the witnesses, whenever the testimony tends to stray away from that which will illumine the real issues in this case. I do not think your Honor is going to sit here and listen to all the individual grievances between the organizations and with the Railroad, and so forth, and gain any illumination as to the legal issue in this case, [27] and yet, frankly, I can't see how very much testimony can be presented except testimony of that irrelevant character. And I wish to have it understood in advance that in making any objections to such testimony it is not captious or a desire to confine this hearing or avoid discussions of the equities, and so forth, but merely because of the fact that from considerable experience in this very matter, I know the extent to which it is easy to wander off into bypaths, discuss individual controversies, and waste an enormous amount of time on matters which have no relationship to the issues before the Court. I do not wish to seem to be annoying.

The Court: I hope no counsel will offer evidence here that is not essential to the determination of the issues involved.

Mr. Richberg: I feel we should keep the matter down, as I stated to your Honor at the start. This could be decided, and I think your Honor will essentially decide it, upon the pleadings. But to clarify what the issues are, to clarify the meaning of the

Railway Labor Act, it may be desirable to have certain limited amount of evidence as to the railroad practice here involved.

May I add one further matter: I have not gone into the detail of the Railway Labor Act, but I would like to say one thing at the outset: It is an act which comes very seldom before the Federal Courts—quite different from the National Labor Relations Act. The Railway Labor Act does not provide for coercive processes. It relies on persuasion and agreement. There are, of course, a few rights declared subject to enforcement by judicial process, and so now this matter comes before the Court. But if I may be permitted a personal word, the Act was the product of the organizations, themselves, back in 1923, [28] as the result of general dissatisfaction with the Federal law at that time, which provided for a Railway Labor Board with power to make decisions but none to enforce them, and the organizations, themselves, developed the Railway Labor Act on the basis of applying previous Federal laws to a method of mediation and conciliation. The major purpose of the Act was to promote voluntary adjustment of disputes. I am familiar with this because I was engaged by the organization at the time. When the Act was finally drafted, it was introduced into the Congress, in 1924, and named the Howell-Barkley Bill. The Railway executives who had opposed the Act decided to join us in making a good Act. The railway executives and labor organizations worked on it in 1925 and came to Congress

in 1926 with an agreed Act, which was passed by the Congress with an overwhelming vote, because it had the support of both the executives of the railroads and the labor organizations as their program for peace.

I think that is important because the construction to be given this Act depends on an understanding of railroad practice, railroad methods, and what was intended by this Act. It has been possibly the most successful labor law that was ever enacted, because from 1926 to 1940 there has not been a major strike on a single railroad in the United States, although we have been through terrible times, heavy depression, losses of income, changes, deductions, lowering of production, wages, and all that sort of thing.

In 1934 the employees' organizations went to Congress to obtain a few changes which experience had seemed to make desirable. In that they were assisted by the Federal Coordinator of Railroads and his staff, who were also concerned with the same problem. The amendments were passed without, I will say, very [29] serious opposition at that time. It represents—and I have given this little history because I want to make this clear—it represents an extreme effort to rely upon all the sources of voluntary bargaining, of contract and agreement. If the railroads and the organizations cannot decide matters, then the Mediation Board comes in without power to do anything except help bring about a settlement. With the one exception, they can hold an

election to determine who is the representative of the craft that they wish. They have the help of the Mediation Board or arbitration, and if they do not accept arbitration, then if there is a strike threatened, the President of the United States has power under the law to appoint an Emergency Board, which sits and in thirty days makes its report and recommendations. And I may say, with practically no exceptions, such boards that have been created have had all their recommendations put into effect by the organizations and the railroad afterward, as an expression of the dominant public opinion as to how they should settle their disputes.

As the result of that machinery we have had this wonderful peaceful era on the railroad, and I think, if your Honor please, it is well to point out for that reason—because this is not a matter of litigation, it is not a matter to be decided by trials, decisions of courts; it is a matter to be adjusted by agreement—for that reason there has been very little litigation in the Federal Courts on the construction of this Act, but such as has been litigated, like the Virginian Railroad Case, has emphasized this essential purpose of this Act, that it gives the free right of bargaining, the right of men to select their own representatives, make their own contracts with the railroads, and determine relationships on that basis. [30]

Now, I think it will be perfectly clear to your Honor, if it is not already, with a little evidence in this case it will be perfectly clear if the En-

gineers and Railroad cannot agree with what the Firemen and the Railroad have agreed, then there is no reason, as a matter of fact, why anyone should interfere with the Railroad and the Firemen making an agreement as to that matter which primarily affects the Firemen's interest, when the Act requires all parties to make reasonable efforts to arrive at an agreement.

Mr. Naus: If the Court please, I will turn to the evidence in a moment, but I would like to clear up your Honor's mind as to one impression which may have been made by Counsel for the Intervener. I think the greatest emphasis—certainly the longest time—was placed and given by him to the assertion that one of the two main issues here was whether the Firemen have the right to have exclusively in the Firemen's schedule the subject-matter when engineers cut off the Engineers' list may go back firing. There is no such issue in the case. We do not dispute that. That is exclusively their right and their function. There is no controversy about that. So I want no misunderstanding about that.

The Court: In other words, no matter how many they may elect to send down to the Firemen's group, you are not objecting to it?

Mr. Naus: No, I would rather say this. I will put it this way: My position is it is exclusively a function of the plaintiff, here, as representative of the Engineers, to collectively bargain with the Railroad as to when Engineers shall be cut off the Engineers' list. Then I go further and say after

they are cut off the list, that is as far as the Engineers can go. From [31] there on it is exclusively a matter between the Railroad and the Firemen's representative to collectively bargain as to whether or when demoted engineers or cut-off engineers may go back firing. So I would not want any misunderstanding about that or any time wasted on it, because I make no controversy about that.

Also, further, if the Court please, Counsel for the Intervener is quite right in drawing attention to the Virginian Railroad Case, 300 U. S. That is the one case in the Supreme Court that takes up the Act ~~as~~ amended in 1934, sustains, and to some extent construes it. As a matter of fact, it is the principal case on which the plaintiff in this case relies, and when your Honor comes to read it you will find a portion of it that I think has a fairly direct bearing on the litigation before you, and I have taken the liberty of having typed a portion of the opinion in the Virginian Railroad Case, and a footnote to which the Court refers in the opinion, and upon reading that portion you will find that the United States was *amicus curiae* in that case, and that the Court, in writing the opinion through Mr. Justice Stone leaned heavily upon the brief of the United States as *amicus curiae*. I have obtained a copy of that brief from the Library in San Francisco, and I have had typed a full copy of the portion of the brief to which the Court's opinion is addressed, and merely for convenience in reading the case and having it before you, I

hand that up; and for convenience of counsel, instead of lugging books around, I will hand one to each side. I will pass any argument on it at this time, however.

Now, if the Court please, we will proceed with the evidence, and you will have no fear of my rambling off the issues, I assure you.

I offer, first, the Engineers' Contract. I might say [32] everybody on both sides is familiar with it, and we are waiving all questions of foundation, and we are putting it in without further proof.

The Court: No. 1 in evidence.

(Agreement between Southern Pacific Company, Pacific Lines, and Brotherhood of Locomotive Engineers, effective January 9, 1931, was received in evidence and marked "Plaintiff's Exhibit No. 1.")

[Set out at end of Reporter's Transcript, page 326 of this printed record.]

Mr. Naus: Similarly, I offer the Firemen's Contract.

The Court: Plaintiff's No. 2.

(Agreement between Southern Pacific Company, Pacific Lines, and Brotherhood of Locomotive Firemen and Enginemen, effective, rates of pay, October 1, 1937, rules, June 1, 1939, was received in evidence and marked "Plaintiff's Exhibit No. 2.")

[Set out at end of Reporter's Transcript, page 468 of this printed record.]

Mr. Naus: I might say, your Honor will observe on the outside front cover of each a printed date. I think it will appear as the evidence goes on these are only printed every so many years, and counsel will agree, I take it, that these that I offer in were the last printed schedules.

The Court: In other words, there has been no modification of those contracts?

Mr. Naus: I would not put it quite that way. Modifications go up in typewriting or exchange of letters in some minor particulars, but it is only every so often that they revise the contracts in new printed forms.

The Court: You can't do that, then, until the current case is ended.

Mr. Naus: No, I think counsel will agree that for purposes of the present case, these contracts may be taken as complete contracts, is that correct?

[33]

Mr. Mason: I think that is correct.

Mr. Richberg: I think so far as the issues of this case are concerned, there is no charge, if it please the Court. May I suggest that Exhibits 1 and 2 be identified in the record by the dates?

Mr. Naus: All right. The Engineers' was offered first. That was No. 1, Mr. Clerk. That bears a printed effective date January 9, 1931. No. 2, the Firemen's contract, has two separate effective dates. As to rate of pay, the effective date is October 1, 1937. As to rules, the effective date is June 1, 1939.

Mr. Mason: May I interrupt a moment, Counsel?

Mr. Naus: Surely.

Mr. Mason: Your Honor, the Engineers' contract is referred to in paragraph 4 of the complaint as having been continuously in effect ever since its date, January 9, 1931, with occasional amendments and additions; both the Intervener and the Defendant admitted the allegations of paragraph 4. So that for the purposes of this case, by the pleadings Exhibit 1 is admitted to be complete.

The Court: Proceed.

Mr. Naus: Now, if the Court please, departing a little from the usual order, but for the purpose of expedition and moving along more simply and clearly, counsel got together in advance of the trial, here, and it was agreed upon all three sides that the Southern Pacific should prepare certain data or statistical matter, and they have done so, and given us a full opportunity before hand to examine it, and, as I understand, all sides are in agreement upon it. But having been prepared by the Southern Pacific, I ask leave at this time to suspend the plaintiff's case [34] for a few moments and let Mr. Mason, for the Southern Pacific, put a witness on out of order for the limited purpose of putting on that matter.

The Court: There is no objection, if you are all agreed on that matter.

Mr. Mason: Very well, your Honor, we will call Mr. Buckley.

CORNELIUS M. BUCKLEY,

called as a witness by the Defendant, being first duly sworn by the Clerk of the Court, testified as follows:

Direct Examination

Mr. Mason: Q. Mr. Buckley, by whom are you employed?

A. By the Southern Pacific Company.

Q. In what capacity, Mr. Buckley?

A. Assistant Manager of Personnel.

Q. You have been Assistant Manager of Personnel since January 1st of the present year?

A. That is correct.

Q. Prior to that time you were employed by the company for a great many years as locomotive fireman and locomotive engineer?

A. Yes, sir.

Q. I think your employment as locomotive fireman started in 1905, did it not?

A. That is correct.

Q. And you went through the grade of fireman and were promoted to engineer?

A. Yes, sir.

Q. Serving with headquarters at Los Angeles?

A. Yes, sir, Los Angeles.

Q. You also served for a short time in 1929 and 1930 as an official on the Los Angeles Division, District Service Inspector and Assistant Trainmaster?

A. Yes, sir.

Q. I understand you were also a Local, that is, a Division or [35] lodge official of the Brotherhood of Locomotive Firemen and Enginemen, the Intervener in this case?

(Testimony of Cornelius M. Buckley.)

A. Yes. In 1915 I was the President of Lodge 97, and a member of the Local Grievance Committee, and a member of the General Grievance Committee, and in 1916 I was the Chairman of the Local Grievance Committee and a member of the General Grievance Committee.

Q. That is the Firemen's Organization?

A. The Firemen's Organization.

Q. Now, were you also thereafter a Lodge or Division Official of the Los Angeles Division Lodge of the Brotherhood of Locomotive Engineers, the plaintiff in this case?

A. Yes, sir. From 1922 to about July 1928 I was the Chairman of the Local Committee of adjustment of the Engineers' Division in Los Angeles, and a member of the General Committee of Adjustment.

Q. And again, from 1934 to 1939, is that correct?

A. And also during 1934 and 1939.

Q. You severed your connection with the Local Committee at Los Angeles and with the General Committee of Adjustment when you took your present position, did you not?

A. That is correct.

Q. Is it correct that you have been a member at one time or another of both of the organizations which are here as plaintiff and intervener?

A. Yes, I was a member of the Brotherhood of Locomotive Firemen and Enginemen between 1906 and 1920, and I have been a member of the En-

(Testimony of Cornelius M. Buckley.)

gineers' Organization from 1918, and I am still a member.

Q. Now, have you prepared or supervised the preparation for the purposes of this case of four statements? A: I have.

Q. Have you before you, Mr. Buckley, a copy of a statement entitled "Number of Employees of Classes Shown, Southern Pacific Lines (including former E. P. & S. W.), as reported to Inter- [36] state Commerce Commission for months shown (I.C.C. Middle-of-Month Count) ?

A. This statement was prepared under my direction.

Mr. Naus: So far as the plaintiff is concerned, and for the purposes of this case, the plaintiff will assume or concede that the tables which Mr. Mason has prepared have been properly prepared, and waives foundation.

Mr. Richberg: The same concession, if the Court please.

The Court: It will be received in evidence, then.

Mr. Mason: We offer the statement in evidence as Defendant's Exhibit next in order, No. 3.

The Court: I was going to make each set of exhibits separate.

Mr. Mason: We might as well have one continuous set of numbers.

The Court: It will simply be Exhibit No. 3, then.

(The document in question was thereupon received in evidence and marked "Exhibit 3.")

GENERAL COMMITTEE, B. of L. E.

vs.

SOUTHERN PACIFIC CO.,

U. S. District Ct., N. D. Cal.,

No. 21031-L

Exhibit No. 3

Witness C. M. Buckley.

EXHIBIT No. 3

NUMBER OF EMPLOYEES OF CLASSES SHOWN, SOUTHERN PACIFIC LINES (INCLUDING FORMER E. P. & S. W.),
AS REPORTED TO INTERSTATE COMMERCE COMMISSION FOR MONTHS SHOWN (I. C. C. MIDDLE-OF-MONTH
COUNT)

| Line No. | Divisions | Sept. 1939 | Oct. 1939 | Nov. 1939 | Dec. 1939 | Jan. 1940 | Feb. 1940 | Mar. 1940 | Apr. 1940 | May 1940 | June 1940 | July 1940 | Aug. 1940 |
|--|--------------------|---------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|-------------|--------------|--------------|--------------|
| (a) | (b) | (c) | (d) | (e) | (f) | (g) | (h) | (i) | (j) | (k) | (l) | (m) | (n) |
| ICC REPORTING DIVISIONS 121-122-123-124 (Road and Yard Engineers) | | | | | | | | | | | | | |
| 1 | Western | 324 | 294 | 313 | 297 | 279 | 258 | 256 | 256 | 260 | 266 | 272 | 300 |
| 2 | Sacramento | 321 | 310 | 271 | 245 | 207 | 213 | 247 | 225 | 266 | 273 | 279 | 318 |
| 3 | Salt Lake | 158 | 169 | 137 | 124 | 104 | 108 | 113 | 114 | 127 | 124 | 138 | 151 |
| 4 | Portland | 199 | 195 | 199 | 183 | 165 | 170 | 160 | 169 | 188 | 190 | 192 | 209 |
| 5 | Coast | 263 | 225 | 216 | 204 | 178 | 166 | 194 | 204 | 205 | 166 | 201 | 215 |
| 6 | San Joaquin | 174 | 179 | 153 | 145 | 151 | 151 | 128 | 133 | 141 | 142 | 151 | 165 |
| 7 | Los Angeles | 179 | 196 | 199 | 170 | 178 | 188 | 179 | 176 | 181 | 190 | 180 | 173 |
| 8 | Tucson | 116 | 118 | 128 | 135 | 145 | 152 | 160 | 140 | 138 | 132 | 123 | 111 |
| 9 | Rio Grande | 76 | 81 | 83 | 82 | 82 | 92 | 95 | 87 | 80 | 87 | 79 | 70 |
| 10 | System Total | 1810 | 1767 | 1699 | 1585 | 1489 | 1498 | 1532 | 1504 | 1586 | 1570 | 1615 | 1712 |
| ICC REPORTING DIVISIONS 125-126-127-128 (Road and Yard Firemen) | | | | | | | | | | | | | |
| 11 | Western | 318 | 319 | 300 | 302 | 269 | 262 | 253 | 258 | 254 | 269 | 265 | 288 |
| 12 | Sacramento | 311 | 296 | 251 | 236 | 199 | 217 | 228 | 232 | 254 | 278 | 294 | 320 |
| 13 | Salt Lake | 170 | 178 | 142 | 132 | 112 | 118 | 113 | 114 | 141 | 127 | 145 | 160 |
| 14 | Portland | 223 | 200 | 207 | 183 | 165 | 165 | 177 | 182 | 192 | 196 | 199 | 197 |
| 15 | Coast | 248 | 225 | 215 | 190 | 173 | 156 | 202 | 211 | 213 | 175 | 199 | 208 |
| 16 | San Joaquin | 168 | 176 | 152 | 162 | 165 | 165 | 142 | 149 | 151 | 151 | 164 | 158 |
| 17 | Los Angeles | 165 | 208 | 192 | 186 | 179 | 180 | 181 | 171 | 179 | 189 | 177 | 177 |
| 18 | Tucson | 132 | 127 | 137 | 139 | 150 | 159 | 153 | 131 | 143 | 156 | 116 | 108 |
| 19 | Rio Grande | 80 | 82 | 79 | 81 | 85 | 96 | 97 | 89 | 82 | 88 | 75 | 69 |
| 20 | System Total | 1815 | 1802 | 1675 | 1611 | 1497 | 1518 | 1546 | 1537 | 1609 | 1629 | 1634 | 1685 |

Source: ICC Wage Statistics, Form B, "Monthly Report of Employees, Service, and Compensation", regularly rendered by Accounting Department, S. P. Co., (Auditor of Disbursements).

[Endorsed]. Filed Oct. 10, 1940. Walter D. McKee, Clerk, U. S. District Court, N. D. Cal.

(Testimony of Cornelius M. Buckley.)

Mr. Mason: Q. Mr. Buckley, I show you a statement bearing the title, "Statement Showing, for Southern Pacific Company (Pacific Lines) By Seniority Districts Shown (not including former E. P. & S. W. Lines), Total Number of Engineers on Seniority Lists; Also Total Number of Engineers on Working Lists," and so forth. Was that exhibit prepared by you or under your direction?

A. It was prepared by me from information supplied me by the Superintendent under my direction.

Q. Is there a correction to be made on the face of that exhibit?

A. Yes, sir. There is one correction, Mr. Mason.

Mr. Mason: May we have this statement received as No. 4, if your Honor please, and then we will make the correction so it-[37] will appear.

The Court: It will be received as No. 4.

(The document in question was thereupon received in evidence and marked Exhibit No. 4.)

EXHIBIT No. 4

STATEMENT SHOWING, FOR SOUTHERN PACIFIC CO., (PACIFIC LINES), BY SENIORITY DISTRICTS SHOWN (NOT INCLUDING FORMER E. P. & S. W. LINES), TOTAL NUMBER OF ENGINEERS ON SENIORITY LISTS; ALSO TOTAL NUMBER OF ENGINEERS ON WORKING LISTS ON DATES SHOWN, AND TOTAL NUMBER OF ENGINEERS ON SENIORITY LISTS, BUT NOT AVAILABLE FOR REASONS STATED.

Sub-Column (1)—Engineers on active working list on date shown.

Sub-Column (2)—Engineers not available, account on leave of absence, sick leave, or employed as organization or company officials.

| SENIORITY DISTRICTS | | | | | | | | | | | | | | | | | | | | | | | | | |
|---------------------|--------------------------------|---------------|--------------------|--------------------|--------------------|-----------------|----------------|-------------------|---------------|-----------------|-----------------------|-----------------------|---------------|-----|----|-----|----|-----|----|----|----|----|----|-------|-----|
| Line No. (a) | (b) | Tucson (c) | Los Angeles (d) | Coast (e) | San Joaquin (f) | Stockton (g) | Western (h) | Sacramento (i) | Shasta (j) | Portland (k) | West Salt Lake (l) | East Salt Lake (m) | TOTALS (n) | | | | | | | | | | | | |
| 1 | On Seniority List July 1, 1939 | 198 | 255 | 297 | 201 | 136 | 331 | 293 | 163 | 252 | 116 | 88 | 2,330 | | | | | | | | | | | | |
| 2 | On Seniority List Jan. 1, 1940 | 196 | 250 | 292 297 | 200 | 138 | 346 | 292 | 176 | 250 | 112 | 86 | 2,343 | | | | | | | | | | | | |
| 3 | On Seniority List July 1, 1940 | 189 | 245 | 297 292 | 200 | 137 | 345 | 287 | 174 | 245 | 109 | 84 | 2,307 | | | | | | | | | | | | |
| 4 | September 1, 1939 | 101 | 33 | 196 | 21 | 274 | 7 | 173 | 7 | 94 | 10 | 318 | 20 | 190 | 44 | 123 | 21 | 220 | 26 | 88 | 8 | 59 | 5 | 1,836 | 202 |
| 5 | September 15, 1939 | 136 | 22 | 221 | 22 | 285 | 8 | 178 | 6 | 92 | 9 | 319 | 19 | 188 | 40 | 140 | 39 | 223 | 32 | 78 | 12 | 62 | 7 | 1,922 | 216 |
| 6 | October 1, 1939 | 133 | 18 | 222 | 19 | 272 | 11 | 189 | 5 | 92 | 10 | 297 | 41 | 183 | 36 | 136 | 19 | 226 | 39 | 87 | 11 | 68 | 5 | 1,905 | 214 |
| 7 | October 15, 1939 | 120 | 20 | 205 | 16 | 269 | 9 | 179 | 4 | 92 | 9 | 290 | 48 | 185 | 36 | 129 | 26 | 224 | 38 | 88 | 12 | 66 | 9 | 1,847 | 227 |
| 8 | November 1, 1939 | 134 | 16 | 206 | 9 | 256 | 10 | 177 | 4 | 89 | 7 | 322 | 16 | 182 | 33 | 141 | 26 | 226 | 27 | 91 | 12 | 62 | 9 | 1,886 | 169 |
| 9 | November 15, 1939 | 135 | 17 | 201 | 8 | 250 | 11 | 164 | 4 | 82 | 5 | 322 | 13 | 167 | 28 | 137 | 19 | 210 | 19 | 70 | 6 | 54 | 4 | 1,792 | 134 |
| 10 | December 1, 1939 | 117 | 17 | 192 | 7 | 243 | 13 | 161 | 4 | 74 | 2 | 326 | 12 | 154 | 25 | 121 | 13 | 197 | 24 | 62 | 14 | 49 | 3 | 1,696 | 134 |
| 11 | December 15, 1939 | 133 | 15 | 184 | 11 | 224 | 13 | 151 | 4 | 76 | 0 | 302 | 36 | 150 | 30 | 118 | 18 | 195 | 21 | 62 | 12 | 50 | 2 | 1,645 | 162 |
| 12 | January 1, 1940 | 138 | 17 | 206 | 11 | 228 | 10 | 149 | 4 | 69 | 9 | 313 | 25 | 143 | 36 | 118 | 31 | 195 | 37 | 53 | 10 | 42 | 2 | 1,654 | 192 |
| 13 | January 15, 1940 | 137 | 11 | 195 | 12 | 213 | 9 | 148 | 4 | 70 | 4 | 323 | 15 | 136 | 27 | 98 | 17 | 178 | 13 | 55 | 10 | 38 | 2 | 1,591 | 124 |
| 14 | February 1, 1940 | 146 | 11 | 203 | 8 | 202 | 9 | 140 | 4 | 66 | 3 | 325 | 13 | 130 | 34 | 100 | 11 | 188 | 24 | 67 | 12 | 43 | 3 | 1,610 | 132 |
| 15 | February 15, 1940 | 162 | 12 | 203 | 9 | 202 | 9 | 139 | 3 | 64 | 2 | 322 | 16 | 132 | 28 | 98 | 15 | 183 | 13 | 56 | 5 | 42 | 2 | 1,603 | 114 |
| 16 | March 1, 1940 | 169 | 10 | 194 | 9 | 199 | 10 | 131 | 3 | 60 | 8 | 319 | 19 | 145 | 36 | 108 | 15 | 176 | 14 | 75 | 8 | 40 | 3 | 1,616 | 135 |
| 17 | March 15, 1940 | 157 | 11 | 186 | 9 | 203 | 13 | 124 | 4 | 65 | 4 | 321 | 17 | 145 | 27 | 117 | 13 | 172 | 12 | 54 | 7 | 42 | 1 | 1,586 | 118 |
| 18 | April 1, 1940 | 155 | 11 | 189 | 7 | 213 | 11 | 129 | 4 | 64 | 9 | 308 | 30 | 133 | 30 | 131 | 16 | 172 | 16 | 57 | 8 | 41 | 3 | 1,592 | 145 |
| 19 | April 15, 1940 | 140 | 11 | 188 | 8 | 213 | 13 | 133 | 7 | 64 | 5 | 312 | 26 | 145 | 24 | 116 | 23 | 183 | 24 | 61 | 5 | 41 | 3 | 1,596 | 149 |
| 20 | May 1, 1940 | 143 | 11 | 191 | 11 | 229 | 12 | 139 | 7 | 69 | 4 | 306 | 30 | 153 | 28 | 120 | 30 | 202 | 19 | 66 | 10 | 49 | 6 | 1,667 | 168 |
| 21 | May 15, 1940 | 148 | 12 | 196 | 11 | 230 | 15 | 143 | 6 | 66 | 7 | 310 | 28 | 159 | 27 | 126 | 24 | 205 | 23 | 69 | 7 | 53 | 4 | 1,705 | 164 |
| 22 | June 1, 1940 | 140 | 13 | 203 | 25 | 234 | 12 | 144 | 11 | 67 | 13 | 295 | 43 | 157 | 30 | 125 | 31 | 212 | 41 | 64 | 8 | 49 | 7 | 1,690 | 234 |
| 23 | June 15, 1940 | 154 | 12 | 208 | 21 | 230 | 15 | 155 | 10 | 74 | 6 | 281 | 57 | 159 | 36 | 128 | 23 | 212 | 29 | 55 | 10 | 50 | 6 | 1,706 | 225 |
| 24 | July 1, 1940 | 151 | 16 | 216 | 20 | 243 | 15 | 158 | 9 | 73 | 6 | 285 | 53 | 151 | 40 | 122 | 25 | 220 | 40 | 64 | 10 | 53 | 11 | 1,736 | 245 |
| 25 | July 15, 1940 | 127 | 20 | 216 | 19 | 254 | 10 | 160 | 9 | 73 | 12 | 293 | 45 | 159 | 43 | 128 | 26 | 209 | 32 | 69 | 9 | 57 | 7 | 1,745 | 232 |
| 26 | August 1, 1940 | 112 | 35 | 199 | 22 | 257 | 9 | 176 | 8 | 85 | 9 | 287 | 51 | 199 | 21 | 130 | 15 | 222 | 36 | 85 | 10 | 58 | 15 | 1,810 | 231 |
| 27 | August 15, 1940 | 95 | 36 | 210 | 22 | 270 | 11 | 179 | 7 | 85 | 10 | 286 | 52 | 206 | 32 | 132 | 22 | 237 | 44 | 71 | 16 | 62 | 6 | 1,833 | 258 |

[Endorsed]: No. 21301-L. Exhibit No. 4. Filed 10/10/40. Walter B. Maling, Clerk. By Harry L. Fouts, Deputy Clerk.

(Testimony of Cornelius M. Buckley.)

Mr. Mason: Q. Now, what is the correction that is to appear on the face of No. 4?

I will ask the parties to take note of this. It is a very slight correction.

A. If you will refer to line 2 on column E, the figure "292" there shown should read "297." Also on line 3, column E, the figure "297" there shown should read "292".

The Court: Line E?

The Witness: Line 2, under the heading "Coast".

Mr. Naus: Perhaps I could help. You have the heading "Coast" there, the third column; the first figure under that is "297".

The Court: That is correct.

Mr. Naus: The next two should be transposed. The "292" should become "297", and the "297" should become "292".

Counsel, before Mr. Mason proceeds, I notice in the furthest right-hand column there, the heading "Totals", the first three lines have not been figured in. I would like permission to insert the pencil totals subject to anybody making the correction if they find the total wrong.

Mr. Mason: I would be glad to have that done.

Mr. Naus: The totals, in the top three lines, in which the witness has just made a correction, I believe the first total should be 2330.

The Court: Is that under "A"?

Mr. Naus: "N", the total away over to the extreme right, the top three figures. [38]

(Testimony of Cornelius M. Buckley.)

The Court: 2330.

Mr. Naus: And I believe the second line should be totaled 2343, and I believe the third total should be 2307. That is giving effect to the correction over there, and that, of course, being purely mathematical, is subject to correction at any time.

The Court: I suppose that can be placed on the original in the hands of the Clerk?

Mr. Mason: So stipulated.

Q. Mr. Buckley, have you before you a statement bearing the title "Number of Firemen on Seniority Districts as Shown Available for Promotion as Engineers August 15, 1940, But Who Have Not Yet Secured a Seniority Date as Engineer"?

A. Yes, sir.

Q. That statement was likewise prepared under your direction?

A. Yes, sir.

Mr. Mason: We offer the statement as Exhibit No. 5.

The Court: So received.

Mr. Mason: Q. Mr. Buckley, have you before you a statement entitled "Statement Showing Number of Locomotive Miles Accumulated on Southern Pacific Lines (including former E. P. & S. W.), by Months, For Each Division, and in Total," and so forth?

A. Yes, sir.

Q. Was that statement prepared under your direction?

A. Yes, sir.

(Testimony of Cornelius M. Buckley.)

Mr. Mason: We offer the statement just referred to as No. 6.

(The documents in question were received in evidence and marked, respectively, "Exhibit 5" and "Exhibit 6.")

EXHIBIT No. 5

GENERAL COMMITTEE, B. of L. E.

vs.

SOUTHERN PACIFIC CO.,

U. S. District Ct., N. D. Cal.,

No. 21031-L

Exhibit No. 5

Witness C. M. Buckley.

NUMBER OF FIREMEN ON SENIORITY DISTRICTS AS SHOWN AVAILABLE FOR PROMOTION AS ENGINEERS AUGUST 15, 1940 BUT WHO HAVE NOT YET SECURED A SENIORITY DATE AS ENGINEER

| Seniority District | Number |
|--------------------|--------|
| Tucson | 25 |
| Los Angeles | 9 |
| Coast | 14 |
| San Joaquin | 25 |
| Stockton | 0 |
| Western | 49 |
| Sacramento | 11 |
| Shasta | 0 |
| *Portland | 21 |
| West Salt Lake | 9 |
| East Salt Lake | 18 |
| Total | 181 |

*7 firemen securing a seniority date as engineers between August 15 and 31, 1940, not counted.

[Endorsed]: Filed Oct. 10, 1940. Walter B. Mal-
ing, Clerk. By Harry L. Fouts, Deputy Clerk.

GENERAL COMMITTEE, B. of L. E.

vs.

SOUTHERN PACIFIC CO.,

U. S. Dist. Ct., N. D. Cal.,

No. 21031-L.

Exhibit No. 6.

Witness C. M. Buckley

EXHIBIT No. 6

STATEMENT SHOWING NUMBER OF LOCOMOTIVE MILES ACCUMULATED ON SOUTHERN PACIFIC LINES (INCLUDING FORMER E. P. & S. W.), BY MONTHS, FOR EACH DIVISION, AND IN TOTAL: PERIOD SEPTEMBER, 1939-AUGUST, 1940.

| Line No. (a) | Month (b) | Western (c) | Sacramento (d) | Salt Lake (e) | Portland (f) | Coast (g) | San Joaquin (h) | Los Angeles (i) | Tucson (j) | Rio Grande (k) | TOTAL (l) |
|-----------------|-----------------|----------------|-------------------|------------------|-----------------|--------------|--------------------|--------------------|---------------|-------------------|--------------|
| 1 | September, 1939 | 613,808 | 763,417 | 493,188 | 376,093 | 547,871 | 280,241 | 478,778 | 371,142 | 266,856 | 4,200,394 |
| 2 | Motor Cars | 3,550 | — | — | — | — | 7,019 | — | 12,054 | — | 22,623 |
| 3 | October, 1939 | 634,270 | 754,377 | 501,090 | 358,190 | 542,368 | 297,177 | 507,418 | 401,045 | 282,528 | 4,278,463 |
| 4 | Motor Cars | 918 | — | — | — | — | 7,515 | — | 12,288 | — | 20,721 |
| 5 | November, 1939 | 555,528 | 653,272 | 389,309 | 337,791 | 499,296 | 261,314 | 461,423 | 372,169 | 262,660 | 3,792,762 |
| 6 | Motor Cars | — | — | — | — | — | 4,002 | — | 11,544 | — | 15,546 |
| 7 | December, 1939 | 549,060 | 635,964 | 360,915 | 338,904 | 478,092 | 258,166 | 442,214 | 413,620 | 282,139 | 3,759,074 |
| 8 | Motor Cars | — | — | — | — | — | 2,622 | — | 11,844 | — | 14,466 |
| 9 | January, 1940 | 521,865 | 566,577 | 325,753 | 320,221 | 453,923 | 224,657 | 436,919 | 434,987 | 289,796 | 3,574,698 |
| 10 | Motor Cars | — | — | — | — | — | 4,140 | — | 7,328 | — | 11,468 |
| 11 | February, 1940 | 472,831 | 526,190 | 301,902 | 294,995 | 410,302 | 196,558 | 420,226 | 455,857 | 294,150 | 3,373,011 |
| 12 | Motor Cars | — | — | — | — | — | 3,933 | — | 4,900 | — | 8,833 |
| 13 | March, 1940 | 503,609 | 600,292 | 340,014 | 318,652 | 445,377 | 222,263 | 451,050 | 479,475 | 319,624 | 3,680,356 |
| 14 | Motor Cars | — | — | — | — | — | 4,278 | — | 6,542 | — | 10,820 |
| 15 | April, 1940 | 508,012 | 627,620 | 356,912 | 328,506 | 471,450 | 225,223 | 441,733 | 425,946 | 299,527 | 3,684,929 |
| 16 | Motor Cars | — | — | — | — | — | 4,002 | — | 2,810 | — | 6,812 |
| 17 | May, 1940 | 529,781 | 688,801 | 394,689 | 347,727 | 488,365 | 241,206 | 457,446 | 420,877 | 289,979 | 3,858,871 |
| 18 | Motor Cars | — | — | — | — | — | 4,278 | — | 2,704 | — | 6,982 |
| 19 | June, 1940 | 543,433 | 661,061 | 387,078 | 354,277 | 462,281 | 242,786 | 469,534 | 467,523 | 303,967 | 3,891,940 |
| 20 | Motor Cars | — | — | — | — | — | 4,140 | — | 2,461 | — | 6,601 |
| 21 | July, 1940 | 588,028 | 742,453 | 457,546 | 364,713 | 515,928 | 267,803 | 452,054 | 386,494 | 273,769 | 4,048,788 |
| 22 | Motor Cars | — | — | — | — | — | 4,278 | — | 6,448 | — | 10,726 |
| 23 | August, 1940 | 634,741 | 828,149 | 470,046 | 412,216 | 563,655 | 288,800 | 468,512 | 368,202 | 263,690 | 4,298,011 |
| 24 | Motor Cars | — | — | — | — | — | 4,278 | — | 5,952 | — | 10,230 |
| | Total | | | | | | | | | | |
| 25 | Locomotives | 6,654,966 | 8,048,173 | 4,778,442 | 4,152,285 | 5,878,908 | 3,006,194 | 5,496,307 | 4,997,337 | 3,428,685 | 46,441,297 |
| 26 | Motor Cars | 4,468 | — | — | — | — | 54,485 | — | 86,875 | — | 145,828 |

Source: Accounting Department (Auditor of Equipment Service Accounts) Form 521, "Divisional Operating Statistics".

[Endorsed]: Filed Oct. 10, 1940. Walter B. Maling, Clerk. By Harry L. Fouts, Deputy Clerk.

(Testimony of Cornelius M. Buckley.)

Mr. Mason: Unless your Honor has some questions as to the purpose of the exhibits, I will now withdraw the witness. As Mr. Naus said, we put them in at this point so that the figures and other information would be available to all parties at the outset of the case.

Mr. Naus: I would just like to ask him to explain to the [39] Court the workings of the Seniority List, one of these statements.

The Court: You may proceed.

Cross Examination

Mr. Naus: Q. Mr. Buckley, taking this long, larger exhibit, Exhibit No. 4, under the legend at the top as to sub-column 1, it speaks of the active working list. Will you explain to the Court and to us what an Engineer's Working List is and what a Seniority List is, and the essential difference between the two, so his Honor will be fully informed?

A. A Seniority List is a list of the names of all men who have secured a seniority date as an engineer. The Working List represents the number of engineers who are actually working as such, and it does not necessarily include all of those whose names appear on the Seniority.

Q. The Seniority List is a list of all engineers employed by the company classified?

A. Yes, your Honor. They may not at any particular date be employed or actually serving as an engineer.

(Testimony of Cornelius M. Buckley.)

The Court: Q. But they are classified?

A. They are classified as such and hold seniority as such.

Q. The next list, 33, for instance, that means the number actually employed?

A. I beg your pardon? I do not quite—I didn't get your question, your Honor.

Q. Under the second column, what is that?

A. Oh, I see; the number of engineers not available on account of leave of absence, sick leave, or employed as organization or company officials, but who were eligible to serve as engineers on that particular date.

Mr. Naus: Has your Honor any further questions?

The Court: No further questions. [40]

Mr. Naus: Q. Mr. Buckley, in a broad sense the engineers working list is the list of engineers who are at any given time actually running engine as distinguished from firing, is that correct?

A. That is correct.

Q. Those who are on the working list and running engines are necessarily on the seniority list, but some number on the seniority list may be at a given moment off the engineers working list and back firing? A. That is right.

Q. That covers it rather generally, doesn't it?

A. Yes.

Q. If you will turn to the extreme right hand column of your Exhibit 4, this large document, if

(Testimony of Cornelius M. Buckley.)

for example you turn to line 12, that space of January 1, 1940, you find in the totals in the right hand column that there are 1654 engineers noted there. Now, that is the total number on the working list as of January 1, 1940; that is correct, isn't it?

A. That is correct.

Q. And then in the next column, that 192—

A. Yes, sir.

Q. Do you even include a man like yourself, who is neither firing nor running engine, but nevertheless is on the seniority list, you having gone to work as a company official?

A. That is right.

Q. Do you include, for example, Mr. Peterson, the General Chairman of the Plaintiff, here, who is an organization official?

A. That is right.

Q. Now, adding the 1654 to the 192 gives a total of 1846; so speaking very broadly, if you subtract that total of 1846 from the second total up above that we have put in in pencil, 2343, the difference between that 1846 and 2343 would indicate the number of men having seniority on the engineers seniority list, but who were cut off the working list and were back firing as of that date?

A. That is correct.

Q. Does that illustrate it quite generally and broadly? [41]

A. Yes, sir.

Mr. Naus: I think that is all at this time.

Mr. Mason: It might be desirable at this point to make one further explanation in connection with No. 3.

(Testimony of Cornelius M. Buckley.)

Redirect Examination

Mr. Mason: Q. Mr. Buckley, Exhibit No. 3 undertakes to show the number of employees classed as engineers or firemen on the so-called I. C. C. Middle-Of-The-Month Count? A. Yes.

Q. Now, does that include men who are actually serving in the capacities shown on the fifteenth day of the month, or the middle day of the month?

A. I think, Mr. Mason, if I may be permitted, the best way to explain this particular exhibit would be to quote the rule used in its making.

Q. Will you refer to the Interstate Commerce Commission rule which is pertinent in that regard, and which states how that particular figure is to be made up?

Mr. Naus: Will you, before he proceeds to read it—I am quite willing and desirous that he read it—but will you cite to his Honor the official and technical citation of the rule?

Mr. Mason: Yes, I can get it here. It is a portion of an order made by the Interstate Commerce Commission on July 17, 1940, dealing with the subject of the revision of rules governing the classification of steam railway employees and reports of their service and compensation. I may say that Exhibit No. 3, as is shown at the foot of the exhibit, is prepared from Form B, which is a report of employees' service and compensation regularly rendered to the Interstate Commerce Commission. The rule which the witness is about to read is a rule

(Testimony of Cornelius M. Buckley.)

placed in effect by virtue of the Interstate Commerce Commission order of July [42] 17th, to which I have just referred. I do not find any docket number on the Interstate Commerce Commission order; it is simply a general order issued to all carriers.

Mr. Naus: I might say, if counsel is agreeable, I would be perfectly willing that a copy of the rule be prepared by you and just handed to the Clerk.

Mr. Mason: We will give it to him for his use, for copying into the record at this point, if that is satisfactory.

Mr. Naus: That is all right.

The Witness: "Explanatory Instructions Pertaining to Form B"—that is the caption.

"Column 2.—Enter the total number of employees in service or available for service as of the middle of the month. Employees whose duties are such as to make them includable in two or more Reporting Divisions should be included in that division indicated by the greater part of their time during the month.

"The count should not be restricted to employees actually on duty as of the day of the count, but should cover all employees, including employees under pay on vacation or sick leave, as well as 'extra' men in train and engine service, who are subject to call for duty. Employees who are not subject to call for duty, such as

(Testimony of Cornelius M. Buckley.)

employees not under pay, absent on definite leave, or under suspension, and pensioners not bound to render service, should be excluded."

Mr. Mason: That is all I have, Mr. Buckley.

Mr. Naus: If your Honor will permit me to go back to this Exhibit No. 4—

Recross Examination

Mr. Naus: Q. I notice 11 headed columns, Mr. Buckley. Those are the eleven seniority districts that make up the Pacific Lines; are they, excluding the former E. P. & S. W. Lines?

A. That is right.

Q. Now, at the heading there it speaks of "Seniority Districts," and the tabular matter shows a total of eleven. Will you please give a brief and simple explanation to his Honor with respect [43] to the breaking up of the Pacific Lines into separate seniority districts, their function, purpose, and how they operate?

A. The Pacific Lines, in so far as it may be involved in the present issue, extend from Portland, Oregon and Ogden, Utah, to El Paso, Texas. That length of railway is broken up into eleven divisions, as it relates to the seniority of the engineers and firemen employed on Pacific Lines as shown in this column, here, your Honor, each seniority district having its own name, so it may be distinguished from another.

(Testimony of Cornelius M. Buckley.)

Mr. Mason: May I continue?

Mr. Naus: You may go ahead.

Mr. Mason: Q. Is each seniority district, Mr. Buckley, a separate unit apart from each of the others? A. It is.

Q. And when a man is employed, he is employed in a particular district, is he not?

A. That is right.

Q. Then he acquires seniority there but not on any other district? A. That is also correct.

Q. So a man, for example, who holds seniority on the Coast Seniority District, has no rights on the Los Angeles District, does he?

A. That is true.

Q. Do these seniority districts in a broad sense correspond with the operating divisions, generally speaking, of the company?

A. In a broad way they do.

Q. They overlap divisions, do they not?

A. They overlap in some cases.

Q. Seniority districts are very seldom changed as to their boundaries, are they?

A. Very seldom.

Q. Although operating divisions may be changed from time to time?

A. Operating divisions may be changed.

Q. As an example, do you recall the boundaries of the East Salt [44] Seniority District, the points between which that extends?

(Testimony of Cornelius M. Buckley.)

Mr. Naus: Mr. Mason, by the way, wouldn't the schedules indicate that?

Mr. Mason: Yes.

Mr. Naus: Why not just call the Court's attention to that?

Mr. Mason: Q. I refer you to Article XXXII., Section 1.

Mr. Naus: Page 92, if the Court please, of the Engineers Schedule. It begins on page 92, rather. I presume since that is already in evidence, it is sufficient for the Court to take notice of it.

A. Between Carlin and Ogden.

Mr. Naus: You call it East Salt Lake.

Mr. Mason: Q. It is identified in the schedule under that name?

A. Under the caption of "Ogden District."

Q. You said, I think, the seniority districts for firemen were the same as for engineers?

A. Yes.

The Court: It would be West Salt Lake, wouldn't it?

Mr. Mason: West of Salt Lake is the district between Sparks and Carlin.

Q. Isn't that right?

A. Sparks and Carlin, Hazen and Keeler would be the West.

The Court: It is called the "Sparks District," here. It is not called the "Ogden District"; it is called the "Sparks District."

(Testimony of Cornelius M. Buckley.)

The Witness: The Exhibit No. 4 refers to both of them as "Salt Lake" and distinguishes between them by the use of the words "East" and "West." Now, what is shown on the exhibit as East Salt Lake would be the Ogden District described in the engineers' agreement.

The Court: Q. Carlin to Ogden?

A. That is correct. [45]

The Court: Let us proceed.

Mr. Mason: That is all.

Mr. Naus: Q. Those two, the West Salt Lake and East Salt Lake, read in the Engineers' Schedule, "Sparks District" and "Ogden District," respectively, and those are the only differences between the exhibit and the schedule?

A. It is in the name, that is all. There is no difference.

Mr. Mason: Q. The reason that crept in, Mr. Buckley, was that the Ogden District and the Sparks District were parts of the operating division called the Salt Lake Division, isn't that correct?

A. That is how that error was made. Both seniority districts are under the jurisdiction of one superintendent, and it is operated as the Salt Lake Division.

Mr. Naus: One more question, Mr. Buckley:

Q. Speaking of the Engineers' Seniority List, that is commonly referred to colloquially as holding a date, isn't it? When an engineer holds a date

(Testimony of Cornelius M. Buckley.)

on his list, that is his order of seniority chronologically? A. That is right.

Q. It is also a fact, isn't it, that practically all persons on the Engineers' Seniority List hold some seniority as a fireman? A. Yes, sir.

Mr. Naus: That is all. I will call Mr. Peterson.

PETER O. PETERSON,

Called as a witness by the Plaintiff, being first duly sworn by the Clerk of the Court, testified as follows:

Direct Examination

Mr. Naus: Q. Mr. Peterson, you are the General Chairman of the Plaintiff General Committee in this case, are you? A. I am. [46]

Q. And have been continuously since when?

A. Since August 15, 1927.

Q. You hold a seniority date as a locomotive engineer on the Southern Pacific, Pacific Lines, do you not? A. I do.

Q. Since when?

A. Since September 8, 1907.

Q. You also hold a fireman's date, seniority date, do you? A. I do.

Q. Since when? A. Since May 3, 1903.

Q. When did you last actually run engine before going into the work of your organization as General Chairman? A. August 14, 1927.

(Testimony of Peter O. Peterson.)

Q. Now, just a word or two as to the structure of the plaintiff organization. For convenience I put in your hand Exhibit No. 4, which gives seniority districts, from the heading, and I will ask you, first of all, of what does the membership of your General Committee consist? Who constitute the membership?

A. The Chairmen of our Local Committees. We have a total of fourteen.

Q. Now, there are eleven Seniority Districts. Is there at least one local committee on each Seniority District? A. That is right.

Q. Are there three seniority districts who have two local committees? A. That is correct.

Q. Will you state the names of those seniority districts in which the Engineers have two local committees?

A. There is the Sacramento District, the Portland District, and the Coast District.

Q. So taking the eleven seniority districts, and adding three for those who have two local committees, you have a total of fourteen local committees?

A. That is correct. [47]

Q. Each having a Chairman?

A. That is correct.

Q. As I understand it, the fourteen chairmen of those local committees make up the plaintiff here?

A. That is correct.

Q. And you are the General Chairman of that?

A. That is right.

(Testimony of Peter O. Peterson.)

Mr. Naus: Counsel, turning to page 2 of our complaint, I take it we can agree, can we not, that the Grand National Brotherhood of Locomotive Engineers is a voluntary unincorporated association having membership in the United States and Canada? I, in turn, will give you such concessions as you wish about your organization.

Mr. Mason: Yes.

Mr. Richberg: Yes.

Mr. Naus: It will be agreed, will it not, that as of August 31, 1940 that organization I just spoke of, had a total membership of 60,224 members?

Mr. Richberg: I do not think there is any controversy over that.

Mr. Naus: Will you join in that stipulation, Mr. Mason?

Mr. Mason: Oh, yes.

Mr. Naus: Q. Mr. Peterson, I am turning to a copy of our complaint here where we start quoting certain matters in the Firemen's Schedules, and there are some phrases in there that I thought it might be well to give some idea to his Honor as to their meaning.

(To the Court) Has your Honor page 5 of the complaint before you? Page 5, line 22.

Q. I see an expression there, Mr. Peterson, "Assigned or extra passenger service." What is the meaning of "Assigned service"?

A. It means engineers assigned to regular trains operating between given points. [48]

(Testimony of Peter O. Peterson.)

The Court: Page what of the complaint?

Mr. Naus: Page 5 of the complaint, line 22.

Q. Then I notice on lines 23 and 24, Mr. Peterson, the expression, "Pooled or chain-gang freight."

What does that expression mean simply?

A. It is synonymous. It means the same thing.

Q. "Pooled" is a synonym for "chain-gang"?

A. That is right.

Q. But what does either one of them mean?

A. It means freight assigned between given points running first in and first out.

Q. Now, take Line 26. It says "Road extra list." Is that a working list as distinguished from a seniority list?

A. That is correct.

Q. Now, on line 31 the expression, "Hired engineers" is used. How are engineers recruited on the Southern Pacific? Are any or many hired as engineers as distinguished from those promoted from the ranks of firemen?

A. Very few. We have not hired any engineers on the Southern Pacific since 1920.

Q. Without troubling anyone to turn to the section of the Engineers' Schedule, there is a section of the Engineers' Schedule that agrees on the proportion of hired engineers as against promoted engineers, but in actual practice there have been practically none hired since 1920, is that correct?

A. That is correct.

Q. I notice on page 6, lines 11 and 12; "Sufficient men will be assigned to keep the mileage or equiva-

(Testimony of Peter O. Peterson.)

lent thereof, within certain limitations." In actual practice, in what sense is that word "equivalent" used?

A. We mean by the term "average equivalent" the total earnings made by all of the men and divided, which gives us the average earnings of each man or engineer.

Q. You mean you take, you might say, the total of his pay check [49] for the month, no matter how arrived at, and translate that back into miles, do you?

A. That is correct.

Q. I notice in line 16, page 6, speaking of regulating limits, in actual practice how does regulation occur? That is to say, how do you regulate the number of engineers on the working list?

A. We check the earnings for the engineers for a given period to determine if men should be added to or taken from the list.

Q. Within the scope of the mileage limitations in the Engineers' Schedule?

A. That is correct.

Q. Now, who determines whether men shall be added to the working list or cut off the working list? Is it the railroad management or the Brotherhood of Engineers who determines that, or regulates?

A. The Chairman of our Local Committee is in charge of that, in conjunction with the carrier.

Q. Now, I notice on page 6, line 31, the following: "The average earnings between 26 and 35 days

(Testimony of Peter O. Peterson.)

per month." When it speaks of a possibility of 35 days, does that 35 days relate to what the schedule calls basic days? A. That is correct.

Q. And that will be fully explained by examination of the schedule, itself, and its definition of a basic day and its other provisions for increasing pay? A. That is correct.

Q. On page 7, line 13, I notice the expression, "Emergency engineer." What is an emergency engineer?

A. It means an engineer who is called for service as an engineer when there are no engineers available on the working list.

Q. Someone who has been cut off as an engineer, perhaps a demoted engineer, who has gone back firing and is not on the working list, is called to run engine because of an emergency, is that correct?

A. That is right.

Q. On page 8, around line 27, as near as I can tell from this, [50] it uses the expression, "Engineers' Extra Board." Is the Extra Board part of the Engineers' Working List?

A. That is right.

Q. On page 9, the top two lines, speaking of making an adjustment at the end of a month or checking period, what is a "checking period"?

A. It is the period from which we check the earnings of engineers.

Q. To see whether they go below the minimum

(Testimony of Peter O. Peterson.)

or above the maximum under the mileage regulation? A. That is right.

Q. I notice on page 9, lines 13 and 14, "Adjustment for excess mileage." If counsel will permit me to lead, and I am sure they will, occasionally an engineer will exceed the prescribed maximum, and so you make an adjustment the following period by having him run that many miles less?

A. That is right.

Q. And that is what is meant by "adjustment for excess mileage"? A. That is right.

Q. I have just one or two more questions and I can finish with you, Mr. Peterson. In the development of grievances, at least those within the scope of a negotiated schedule, an engineer will complete a run on some day and then when he gets through he turns in a time slip or something of the sort, does he not? A. Yes, sir.

Q. Tell me the course it takes from there on in those instances where there is a disagreement between the timekeeper, the trainmaster, division superintendent, or someone, and the engineer, as to what he claims. Tell me the course it takes from there on.

A. Usually the engineer, at the completion of his day or run, files a claim with the Division Superintendent.

Q. The claim is just an ordinary time claim?

A. For service performed. It is made on a prescribed form issued by the carrier.

(Testimony of Peter O. Peterson.)

Q. Just like a little paper ticket.

A. If the claim the [51] individual files is not allowed by the Superintendent, the latter will notify the individual engineer that his claim is not allowed, and further state as to what allowance is made. If the individual is not satisfied with the decision, he may handle his own claim further with the Superintendent, or he may turn his—

Q. One moment before you go on. When you say he may handle his own claim further with the Superintendent, you mean he talks to the Superintendent about it as an individual engineer, is that correct? A. Yes, that is right.

Q. Proceed.

A. Or he may turn his claim over to his organization, the local chairman.

Q. Yes.

A. And the Chairman of the Local Committee determines then if it is a claim in his own way.

Q. In other words, the Chairman makes up his mind as to whether he agrees with the claim made by the engineer before he will present it further?

A. Yes, and if the claim is turned over to our organization, or the Brotherhood of Locomotive Engineers, he in turn confers with the Division.

Q. When you say "he", you mean whom?

A. The Chairman of the Local Committee.

Q. Yes.

A. And when they conclude it is a proper claim, they write the Superintendent a letter and ask that

(Testimony of Peter O. Peterson.)

the claim be allowed under a certain rule of the Engineers' Agreement.

Q. In other words, the Local Chairman, in writing the letter to the Division Superintendent, will cite the particular numbered rule or article of the section under which the claim is made?

A. That is right.

Q. Proceed.

A. If the Superintendent agrees with him and allows the claim as presented by the Chairman of the Local Committee, there is no controversy. [52]

Q. Assume a case where there is a disagreement between them at that point. What is the next step?

A. The Local Chairman is privileged to appeal his claim to the Local Committee or to the Chairman of the General Committee.

Q. In other words, the Local Committee Chairman will in effect write you a formal letter in the nature of an appeal?

A. Our rules provide that if the Chairman of a Local Committee is not satisfied with the Superintendent's decision, he will ask the Superintendent or his representative to join him in a statement of fact pertaining to the claim for submission on appeal.

Q. Before proceeding further, in actual practice, then—I know you will permit me to lead, because we are all familiar with this matter—in actual practice, then, if the Local Chairman on one side and the Division Superintendent on the other, disagree

(Testimony of Peter O. Peterson.)

Q. As to the allowance of a claim, they join in getting up a paper that is in the nature of an agreed statement of facts, isn't that correct?

A. Surrounding the claim, yes.

Q. Then what does each do with a copy of the agreed statement of facts from that point on?

A. They address the Assistant Manager of the Personnel Department and the Chairman of the General Committee.

Q. A sort of joint letter to the two?

A. That is correct.

Q. In actual practice, with respect to an engineer's claim presented on the Pacific Lines, one copy will come to you as General Chairman and the other will come to perhaps a man like Mr. Buckley, for the Railroad?

A. That is right.

Q. Then what happens?

A. The Chairman of the General Committee presents a claim to Mr. Buckley, under that circumstance.

Q. Then what happens after presentation?

A. If the claim is allowed, the representative of the carrier so writes the individual. [53]

Q. Assuming a case that is disallowed all the way through. Let us find out the successive steps.

A. If they fail to agree, it is subject to appeal to the Adjustment Board, Division 1 of the Adjustment Board, it is called.

Q. That is the Adjustment Board set up under

(Testimony of Peter O. Peterson.)

the Act of Congress known as the Railway Labor Act? A. That is right.

Q. Have you described in your series of answers now what might be called the usual manner of handling disputed time claims in railroad operation?

A. I have.

Mr. Naus: You may cross-examine.

Cross Examination

Mr. Mason: Q. Mr. Peterson, in your experience as a General Chairman, it is a fact, is it not, that additions to the working list on a particular seniority district are generally made at the instance of the company, are they not?

A. No, I do not so understand the rule.

Q. Isn't it a fact that where the local company official in charge of enginemen thinks that more engineers are needed, he consults with the Local Chairman and asks that more men be added to the working list?

A. If it involves a service requirement.

Q. That is what I mean.

A. The carrier confers with the Chairman of our Local Committee.

Q. Where men are to be cut off the working list, isn't that generally initiated by the Local Chairman after a survey of the earnings?

A. I would say always, because the carrier appears not to be interested as to taking the number of men off.

(Testimony of Peter O. Peterson.)

Q. That is also done by cooperation generally, isn't it?

A. That is the intent of the agreement and the rule.

Q. You were asked by counsel as to grievances involving claims for additional money. Are there other types of grievances that [54] arise?

A. Yes, there are personal grievances of the individual pertaining to discipline and so on.

Q. I understand you to say that such grievances are sometimes handled by the engineer direct with the Division officials?

A. That is correct.

Q. I take it that your organization has no objection to an engineer handling his own grievance personally with the Division officials?

Mr. Naus: You mean, Mr. Mason, as distinguished from doing it through a representative? I just wanted to understand the question fully.

Mr. Mason: Yes, as distinguished from doing it through a representative.

A. I believe that is covered by our Section 22 of Article XXXII. I believe the third paragraph of that rule pertains to that.

Mr. Mason: Q. Yes, I think it does, and you recognize, then, that an individual may handle his own grievance with the Company?

A. His own grievance, not affecting matters contained in the schedule.

Q. If his grievance arises under the provisions

(Testimony of Peter O. Peterson.)

of a schedule, he may still handle it with the company, may he not?

A. Oh, yes, he has the right to present the claim to the management—in fact, required to.

Q. Isn't it the fact also that he may handle that claim through the intervention of a brother engineer?

A. If it involves discipline, they do that sometimes—not very often.

Q. He may do so, however, may he not?

A. That is correct, as far as the schedule is concerned.

Q. And that brother engineer may or may not be a member of the Brotherhood of Locomotive Engineers? There isn't any requirement that he be a member of the Brotherhood, is there?

A. If it in- [55] volves a personal grievance he may have anyone.

Mr. Naus: By the way, Counsel, I suppose we will all agree there are a small number of engineers and a small number of firemen who are not members of either organization?

Mr. Richberg: Yes, I think we can agree there are a few who are not members of either.

Mr. Naus: The exact number is unimportant. There are some.

Mr. Mason: Q. Now, Mr. Peterson, would there be any objection on your part to the handling by an engineer of an individual grievance of another

(Testimony of Peter O. Peterson.)

engineer who happened to be a member of the Firemen's organization?

A. If it involves an individual grievance, no.

Q. Would there be any objection if the individual representing the claimant happened to be a Local Chairman of the Firemen's Organization?

A. Not if it involves an individual grievance or pertains to discipline.

Q. Would there be any objection if the individual representing him happens to be the General Chairman of the Firemen's Organization?

A. Not if it involves a grievance pertaining to discipline as covered by the third paragraph of Section 22, Article XXXII, Engineers' Agreement.

Q. Now, Article XXXII, Section 22, that you just referred to, as quoted in the complaint filed on behalf of your Committee, does not restrict the right of individual representation to discipline, solely; it says, "Any matters pertaining to discipline or other questions not affecting changes in the Engineers' Contract," doesn't it?

A. That is correct.

Q. And another question not affecting a change in the Engineers' Contract might be a claim for money, might it not?

A. Well, if it involves a claim for money, that claim must be [56] settled in accordance with the second paragraph of Section 22, Article XXXII, Engineers' Agreement.

(Testimony of Peter O. Peterson.)

Q. If it is so settled, in your opinion, Mr. Peterson, is there any objection to the presentation of the claim by an engineer not a member of the B. of L. E.?

A. You have reference to an individual engineer presenting a claim?

Q. Yes.

A. No, an engineer is privileged to file the claim with the carrier under the rule.

Mr. Richberg: That is all I have, thank you.

Mr. Naus: If the Court please, I forgot to mention at the beginning of the case that counsel, just before Court convened, arranged with the Reporter to supply each of the three sides with a carbon and they agreed that if your Honor desires, the Reporter may leave the original with your Honor, the cost to be divided among the three parties to this case, and your Honor may so order if you so desire.

The Court: I think it is desirable.

Mr. Naus: That will be the order?

The Court: Yes. We will then adjourn at this time until two o'clock.

(Thereupon an adjournment was taken until 2:00 o'clock p.m.) [57]

Afternoon Session—2:00 o'clock.

PETER O. PETERSON,

Cross Examination

(Continued)

Mr. Richberg: Q. Mr. Peterson, I am not sure the record is quite clear. Will you state the exact date on which you became General Chairman, if you know? A. August 16, 1927.

Q. August 16, 1927?

A. That is correct.

Mr. Richberg: I have no further cross-examination.

Mr. Naus: Nothing further. That is all, Mr. Peterson.

The Plaintiff rests.

Mr. Mason: I take it the defendant may proceed?

The Court: You may proceed.

Mr. Mason: I will call Mr. Buckley.

CORNELIUS M. BUCKLEY,

Called as a witness on behalf of the Defendant—

Previously Sworn.

Direct Examination

Mr. Mason: Q. Mr. Buckley, in your position as Local Chairman, first of the Firemen and later of the Engineers at Los Angeles, and your present capacity, have you become familiar with the working agreements of these two crafts? A. Yes.

(Testimony of Cornelius M. Buckley.)

Q. The agreements which are in evidence here as Exhibits 1 and 2, and the agreements which preceded them? A. Yes, sir.

Q. Have you made any investigation of the preceding agreements on file in the records of the company so as to familiarize yourself with them?

A. To some extent I have.

Q. Does the Local Chairman, in the position you have filled, undertake the presentation of claims or grievances on behalf of the membership?

A. Yes. [58]

Q. In the manner described by Mr. Peterson in his direct testimony?

A. Yes. The Local Chairman will handle the grievances of his individual members, or he will handle the grievances of his craft as such.

Q. As the representative of the entire craft on the Division?

A. The entire craft on the Division.

Q. Now, if there happened to be, when you were Local Chairman for the Engineers' Organization, a member of that organization serving as a fireman, who had been demoted, let us say, and who had a grievance arising out of that service as fireman, would you, as the Local Chairman from the Engineers' Organization represent him in the handling of that grievance? A. Oh, yes.

Q. Supposing there was an investigation into his conduct for the purpose of determining whether discipline should be assessed or not; would you represent him at that investigation? A. Yes, sir.

(Testimony of Cornelius M. Buckley.)

Q. Have you done so?

A. Yes, sir, I have.

Q. Have you any instance that you can call to mind where you have represented the fireman, and the Firemen's Local Chairman has represented an engineer at an investigation?

A. There is one incident that comes to my mind, although I cannot at this time recall either the date or names, where, in an investigation involving an engineer and a fireman, I, as the Local Chairman of the Engineers, represented the fireman and the Local Chairman of the Firemen represented the engineer.

Q. That is because of cross membership, was it?

A. Cross membership. It happened to be the fireman in the case belonged to the Engineers, and the engineer in the case belonged to the Firemen.

Q. Now, besides representing the membership and representing the craft as to the agreement, itself, does the Local Chairman of the [59] Engineers have anything to do with the adjustment of the working lists in the seniority district where he is Local Chairman?

A. Yes, sir, he has.

Q. Just how does he do that?

A. Well, we will say that after making a survey of the earnings of the engineers in the various classes of service, in order to keep their earnings from exceeding the maximum permitted by the rule, he will add additional men to that particular service where, if he does not add them, the average

(Testimony of Cornelius M. Buckley.)

maximum mileage will be *exceed* by those assigned. Also, he reduces the lists when it is evident to him that the men are not making the equivalent of the minimum mileage permitted.

Q. When he proposes to add men to the working list in order to reduce the average miles per man, how does he go about that? Where does he get those men?

A. Well, if he has to add to the extra list, it is necessary to go into the ranks of the firemen and promote firemen or promote men who had previously acquired seniority date as an engineer serving as a fireman. That is, he takes them from the ranks of the firemen.

Q. Does he do it himself, or does he do it in conjunction with some official of the company?

A. He does it in conjunction with the Railroad Company.

Q. He works together with the local official of the Company in charge of the enginemen?

A. Yes, that is right.

Q. When a demotion takes place, when he finds it necessary to cut men off in order to preserve the average mileage above the minimum, does he do that on his motion, or in conjunction with the company?

A. He does that also in conjunction with the Company; that is, he advises the Railroad Company, the official in charge for instance, that the mileage

(Testimony of Cornelius M. Buckley.)

is such, the average earnings possible is such, expressed in miles, it becomes necessary for him to reduce the [60] number of engineers on the engineers' working list.

Q. What is the basic cause for the requirement of additional men at one time, or the requirement for less men and the consequent cutting of the number of engineers at another time?

A. Well, that is the rise and fall in traffic conditions—you might say the ebb and flow of business.

Q. How is engine service measured?

A. It is measured by locomotive miles.

Q. Have you now in mind Exhibit No. 6 that was introduced here?

A. Yes, I think that is one of the exhibits I prepared.

Q. That shows the variation in locomotive miles over a twelve-month period?

A. Yes, and that would represent the rise and fall in business volume.

Q. And that is the basic reason, is it, for the requirement of more or less engineers?

A. Yes, that is the basic reason and the main reason, although additional engineers are necessary to fill the ranks, in the event of death, resignation, pensioners, and so forth.

Q. That is a more or less steady and continuous upward movement of the men in the lower ranks as opposed to the fluctuations due to fluctuations in locomotive mileage?

(Testimony of Cornelius M. Buckley.)

A. The main reason is the fluctuation in locomotive mileage and business.

Q. If I understand correctly, the authority which permits the Local Chairman to add to the engineers' working list or cut off men from the engineers' working list is contained in Article XXXII, Section 6, and the various subdivisions of Section 6 of the Engineers' Working Agreement, Exhibit No. 1? A. That is correct.

Q. Article XXXII, Section 6(a) contains this language:

"When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working list on any seniority district, those taken off may, if they so [61] elect, displace any fireman their junior on that seniority district under the following conditions:"

I will ask you this: Has this option or right to displace firemen their junior always been embodied in the Engineers' Working Agreements on the Southern Pacific? A. No, sir.

Q. When did it first appear?

A. It came in the Engineers' Agreement with the current issue of that agreement, which is dated January 9, 1931.

Q. Now, as the complaint shows, and the answer and the petition of intervention admits, there is substantially the same language contained in Article XLIII of the current Firemen's Agreement, is that correct? A. Yes, sir.

(Testimony of Cornelius M. Buckley.)

Q. Does that same language appear in earlier editions or versions of the Firemen's Agreement?

A. Yes, sir.

Q. Does it appear, for example, in the agreement which was effective May 1, 1929?

A. Yes, sir.

Q. How far back, if you can recall off-hand, or you can recall as a result of an investigation, has there been a rule similar or substantially the same as the one I have quoted in the Firemen's Agreement?

A. I think it first appeared in the Firemen's Agreement, the issue of December 1, 1918—I believe I am correct in that.

Mr. Naus: Mr. Mason, I have no objection to departure from the ordinary rules as to permit the witness to refresh his recollection.

Mr. Mason: I think he has the agreements here.

The Witness: I have the agreement.

Mr. Naus: If other counsel have no objection, why not have him refresh his recollection from that? I might say in explanation, your Honor, these schedules, when printed and published, were widely distributed over the railroad, and hence were something known in the service, and there was no reason why anybody [62] should not have known of them. So that is the reason I think we are all agreeing. It is something that was widely known at the time.

A. December 1, 1918 is correct.

(Testimony of Cornelius M. Buckley.)

Mr. Mason: Q. That is the earliest working agreement for firemen that you can find which contained this rule permitting engineers to displace as firemen when cut off from the engineers' working list?

A. Yes, sir.

Q. What was the date, December 1, 1918, is that correct?

A. Yes, that is correct.

Q. Do you know and, if you know, will you state, from what rule this demotion and displacement rule originated?

A. Yes, it originated from what was known as the Chicago Joint Working Agreement, which was a working agreement in existence between the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen.

Q. When was the Chicago Joint Working Agreement first entered into?

A. I have a copy of it here. It bears the date of May 17, 1913.

Mr. Naus: Can't we agree on that, gentlemen?

The Court: If you don't say something the Reporter won't get it.

Mr. Richberg: I would like to say explicitly we agree to that.

Mr. Mason: I do not think we have to. It has already been recited.

Mr. Naus: Since we have agreed on May 17, 1913, can't we further agree when it was terminated?

Mr. Mason: I was going to ask that question.

(Testimony of Cornelius M. Buckley.)

Q. I understand the Chicago Joint Working Agreement was later abrogated. Do you know when that took place? [63]

A. The nearest I could tell you, give you an answer to that question, is the year.

Q. What was that year? A. 1927.

Q. I want to call your attention to this, Mr. Buckley, that the excerpt which I read to you from Article XXXII, Section 6(a) of the Engineers' Working Agreement, and which is also the first paragraph of Article XLIII of the Firemen's Agreement, ends with the words "Under the following conditions." Then there follows a series of paragraphs setting forth those conditions, does there not?

A. That is correct.

Q. It is also correct, is it not, that those conditions all relate to earnings, limitations, and regulation of engineers substantially as quoted in paragraph 8 of the complaint?

A. You are speaking of the——

Q. Of the remainder of the rule following the word "conditions"?

Mr. Naus: Now, Mr. Mason, I am perfectly willing to have the utmost liberality in the presentation of evidence, but I would much prefer, getting into that, as to what is or is not a condition——

Mr. Mason: I am not into the Joint Working Agreement now.

Mr. Naus: No, but as to the other.

(Testimony of Cornelius M. Buckley.)

Mr. Mason: I am developing from that.

Mr. Naus: I think, if the Court please——

Mr. Mason: I think perhaps I should withdraw the question, because, after all, the agreements are in evidence and they speak for themselves.

Mr. Naus: All I had in mind was I would not want the witness to take the place of the judge.

Mr. Mason: No, I was only starting to refresh his mind.

Q. Mr. Buckley, if the rule in the Firemen's Agreement or in the Engineers' Agreement, Article XXXII, Section 6(a), were to [64] end with the word "conditions" and there were nothing following that, would you, as a Local Chairman; undertaking to regulate the mileage of engineers, or as a Local Chairman undertaking to determine when men might displace as firemen, be able to make any effective regulation?

A. I do not understand that I could, because there would be no conditions to act as a guide.

Q. Will you say whether or not the conditions which follow are an essential part of the rule?

Mr. Naus: That question, if the Court please, is asking the witness to take the place on the bench that you are occupying. There it is in writing.

Mr. Mason: I am only asking him from his standpoint as the Local Chairman of both organizations, one and then the other organization, who have actually undertaken to perform the jobs, and from that standpoint——

(Testimony of Cornelius M. Buckley.)

The Witness: You are asking——

Mr. Naus: One moment. Have you finished the question?

Mr. Mason: I intended to reframe it.

Q. From your standpoint as a local chairman, charged with the job of undertaking regulations, could you operate unless the conditions were included?

Mr. Naus: If the Court please, I object to that as asking the witness to substitute for the Court. We have the rules, Article XLIII, the various sections in the complaint admitted by the answer. We have the schedules here. It is for the Court to determine from a reading of that rule, the writing, what it means, and not for the witness to start indulging in hypothesis as to what he might do.

The Court: It would be merely his opinion.

Mr. Naus: Yes.

The Court: I will sustained the objection. [65]

Mr. Mason: Q. Referring to these earnings limitations of Article XXXII, Section 6 of the Engineers' Agreement, and Article XLIII of the Firemen's Agreement, Mr. Buckley, where does the interest of the engineers craft as a group lie, in keeping the cut-off point relatively high, from the standpoint of average earnings, or keeping the cut-off point comparatively low?

A. The engineers would like to keep it comparatively high.

(Testimony of Cornelius M. Buckley.)

Q. Why is that?

A. Because it would result in a greater earning capacity for the membership of the Engineers, or for the craft of engineers, I should say.

Q. What effect, if any, would it have on the members of the Engineers' Organization who were thus cut off?

A. They would be in the ranks with the Firemen.

Q. And in what position in the ranks of the Firemen?

A. They would be the senior men employed on that Division at that time as firemen.

Q. And as senior firemen, would they have the choice of runs available to firemen?

A. Yes.

Q. From the same standpoint, that of average earnings for the men on the Engineers' Working List, where does the interest of the fireman lie, in having the cut-off point high or in having it low?

A. No, the interest of the fireman would be in having the cut-off point of engineers low.

Q. Why is that?

A. Because that would have the result of not being called upon to absorb engineers who otherwise would be cut off if the cut-off point was higher.

Q. And if engineers are cut off and absorbed by the firemen, what effect does that have on the firemen's craft, generally?

A. Well, it will have the effect of taking out of

(Testimony of Cornelius M. Buckley.)

employment the firemen that are on the bottom of the working list, because you can absorb but so many. [66]

The Court: Q. Are there instances of firemen who are on the top of the list who are not qualified as engineers? Are there instances of that, or is it invariable that the top of the firemen's list is composed of eligible engineers?

A. On most Divisions, your Honor, the firemen on the top of the firemen's list are eligible as engineers.

Q. But not always?

A. Not always. I think one of the exhibits that was presented here this morning will show that only in two seniority districts do we have firemen that are not eligible as engineers.

Q. In that instance, men who are qualified but are not along in service step over the heads of their seniors and do the engineering work?

A. No, no.

Q. Suppose the top three men, for instance, of the Firemen's List did not know how to run an engine. They were just firemen. Then following those two or three are men who are able to do it, and there is need for an engineer. Do you take a man from the lower bracket and put him above those other men?

A. Well, in order to intelligently answer that question, your Honor, I must explain first that firemen are examined for promotion to positions as

(Testimony of Cornelius M. Buckley.)

engineers in the order of their seniority. Now, if the men at the top of the Firemen's Seniority List are unable to pass the examination; men their junior are called up and examined, and if they pass, they are qualified, in which event the men who stood behind the senior men on top of the list, in the event they needed an engineer, would be run around the men at the top.

Q. In other words, they do that which I am suggesting: There is a chance for a fireman under those circumstances to become an engineer over the heads of those who are not qualified?

A. Yes. Now, then, the Firemen's Agreement permits the men who fail first [67] in their examination to take the examination again in six months, but if in the intervening time the junior man is used out of turn, he establishes a date as an engineer, and thereby acquires—

Q. Ah, yes.

A. (Continuing) —a date ahead of the men who failed to pass.

Q. Once having served, he always has the rank on the others? A. That is correct.

Mr. Mason: Q. You have explained, Mr. Buckley, that the Engineers as an organization, as well as a craft or class, have an interest in keeping the cut-off point relatively high, is that correct?

A. Yes.

Q. And Firemen, as a craft or class, as well as firemen as an organization, have an interest in keep-

(Testimony of Cornelius M. Buckley.)

ing the cut-off point for engineers relatively low?

A. Yes.

Q. If the engineers are to revert immediately to firing service? A. Yes.

Q. Now, suppose that the Engineers' Organization, representing the craft or class, were to enter into an agreement placing the cut-off point at, say, the equivalent of 3000 miles, and the firemen's craft or class, that is, the Firemen's Organization, representing the firemen's craft or class, were to enter into an agreement which said engineers could not displace senior firemen immediately upon being cut off unless they were cut off at an average of 2600 miles. Would that have any effect in producing a gap between the two crafts, or between the employees in the two crafts?

A. Well, it would have the effect, if the engineer exercised the right under the rule to cut a man off whose average earnings equivalent was 3000 miles from going back into firing service, if the firemen had a rule, and exercised their right under that rule, to keep that man from going back firing because of being [68] cut off at an average mileage earnings which is higher than their rule permits. What I am trying to say is this: There would be a difference of 400 miles between the two contracts. While the engineers would have the right to cut the man off at 3000 miles, the firemen would have the right to deny the service of the firemen as long as

(Testimony of Cornelius M. Buckley.)

the average mileage equivalent was above 2600. The man, finding himself cut off, would not have any place to go if he was cut off at 3000 miles.

Q. If the cut off point is identical in both agreements, what happens then?

A. There would not be any gap between the two services.

Q. And the man who is cut off immediately finds employment by displacement as a fireman?

A. He would immediately exercise that right.

Q. Mr. Buckley, I want to call your attention to Article XXXII, Section 22, of the Engineers' Agreement, Exhibit 1, and also to Article LI, Section 1, of the Firemen's Agreement, Exhibit 2. Is there any other portion of the Engineers' Agreement, Exhibit 1, which relates to individual representation?

A. No, it is found here in Article XXXII, Section 22.

Q. Will you look at Article XXXII, Section 21 (a)?

A. Yes, that is captioned "Investigations," and deals with the right of an engineer who is under charges to be represented at an investigation.

Q. It also deals with the matter of appeals from the results, does it not?

A. Yes, that is correct.

Q. In your experience as a Local Chairman, have you seen individual representation of engineers in those circumstances?

A. Have I—

(Testimony of Cornelius M. Buckley.)

Q. Have you any recollection of individual representation of engineers under this Article XXXII, Section 21(a)?

A. That is, [69] you mean an engineer representing himself without my assistance as Local Chairman?

Mr. Naus: It seems to me the question is has he ever seen Section 21(a) applied in practice.

Mr. Mason: Q. Yes, have you ever seen Section 21(a) applied in practice by the selection by an engineer under charges of another engineer as his representative?

A. Oh, yes.

Q. Apart from the Local Chairman?

A. Yes, sir, yes, sir.

Q. Or individual representation of the man by himself?

A. Yes.

Q. And in the prosecution of his appeal?

A. Well, let's see now. The prosecution of his appeal—I have in mind the individual who has handled his own case independent of either one of these organizations.

Q. Have you in mind any individual who has had his case handled by another individual, other than the Local Chairman of the B. of L. E.—for instance, the Local Chairman of the B. of L. F. & E.?

A. Oh, yes, many of those cases, many of them.

Q. Have you made any study to determine the origin of Article LI, Section 1, of the Firemen's Agreement?

(Testimony of Cornelius M. Buckley.)

A. That also came out of the Chicago Joint Working Agreement.

Q. Does a similar provision appear in the Chicago Joint Working Agreement? A. Yes.

Q. When did the provision first appear in the Firemen's Agreement on the Southern Pacific?

A. December 1, 1918, appearing at that time as Section 52.

Q. Do you know if the same provision in substantially the same language has appeared in each reprint, each re-issue of the Firemen's Agreement since that time? A. Yes, sir.

Q. Referring to pages 118, 119, and 120 of the Firemen's Agreement, Exhibit No. 2, you will note in black type the portion com- [70] mencing with the words "Addendum to Article XLIII: Application of mileage regulations to part-time men."

A. Yes.

Q. Which is also quoted, I think, in full in the complaint as being one of the alleged infringements on the Engineers. Do you know where this particular provision of the Firemen's Agreement originated?

A. Well, it is shown there, Mr. Mason. It is an excerpt from the letter—

Mr. Naus: Mr. Mason, that schedule is in evidence as Exhibit 2. Isn't the introductory matter on page 118 self-explanatory?

Mr. Mason: I think it is, yes.

(Testimony of Cornelius M. Buckley.)

Mr. Naus: It is probably clearer than the witness could put it, isn't it?

Mr. Mason: I am willing to stipulate that the explanatory matter on pages 118 and 119 is correct, and shows the material was accepted as an agreement between the plaintiff, then represented by Mr. Laughlin, and the intervener, then represented by Mr. McLaughlin, with which the carrier concurred.

Mr. Naus: I could not accept the stipulation in that form, but I am perfectly willing to stipulate that the matter as stated in Exhibit 2 on page 118 and the top of page 119 is true, and it is stated there an agreement was entered into as disposing of a particular numbered case before a particular board. Beyond that the stipulation need not go.

Mr. Mason: You will stipulate, then, an agreement was entered into between the two organizations?

Mr. Naus: I will stipulate that beginning on page 118 the paragraph that commences under the words "Addendum to Article XLIII" is true.

Mr. Mason: What I am particularly anxious to have stipulated and accepted as true are these words: "Accepted by Mr. G. W. [71] Laughlin, First Assistant Grand Chief Engineer, Brotherhood of Locomotive Engineers, and Mr. C. V. McLaughlin, Vice-President, Brotherhood of Locomotive Firemen and Enginemen, and concurred in by the carrier, as disposing of Case No. 11 that was pending before that board."

(Testimony of Cornelius M. Buckley.)

Mr. Naus: Mr. Mason, my stipulation embraces not only those words, but all the words in that paragraph.

Mr. Mason: Yes. Will you also stipulate with me that Mr. Laughlin duly appeared as representing the Brotherhood of Locomotive Engineers before that Emergency Board in 1937, and Mr. McLaughlin duly appeared as representing the Brotherhood of Locomotive Firemen and Enginemen?

Mr. Naus: So far as stipulations are concerned, I do not see that I need go any further. Whether there was ever any Emergency Board is not of importance. They are not a tribunal. They do not adjudicate anything. I will stipulate that that opening paragraph is true. You might proceed with the proof if you want more than that.

Mr. Mason: What I wanted you to stipulate to was Mr. Laughlin had authority to represent—

Mr. Naus: I will stipulate that Mr. G. W. Laughlin had the power to represent for limited purposes. I doubt very much, as a lawyer, whether he had any power whatever to make any working contract. That is a matter for the General Committee. But for the purposes of this litigation, and nothing further, I will stipulate that he had power to make the agreement set forth in the Firemen's Schedule, as recited in the Firemen's Schedule, and for the purpose recited.

Mr. Mason: That disposes of a great deal.

Mr. Naus: I think it does. [72]

(Testimony of Cornelius M. Buckley.)

The Court: Well, is it stipulated to?

Mr. Mason: I accepted—

The Court: I do not hear any response. I see nodding heads, and so forth, but that does not go into the record. Someone will say, "I never agreed to that; show it to me in the record."

Mr. Mason: I accept the stipulation as recited by Mr. Naus.

Mr. Richberg: That is acceptable also to the Intervener.

Mr. Mason: Q. Going to Article XXXVII of the Firemen's Agreement, Mr. Buckley, and turning to Section 15 on page 89 of Exhibit 2, the Firemen's Agreement, first calling your attention to the portion of Section 15 which is not in heavy print, will you explain to the Court what happens when a fireman who has a regular assignment is taken from that assignment to serve as an engineer?

A. Yes. If he is taken off of his assignment and placed on the Engineers' List by joint action of the Local Chairman of the Engineers and the Carrier representative, this section does not apply to him. But if a fireman assigned to a regular run is taken off that run at the instance of the company, to be used in service as an engineer, the company is required to pay him not less than he would have earned in his turn as a fireman had he not been sent out on that run.

Q. In a practical sense, to what type of calling of engineer does that apply?

(Testimony of Cornelius M. Buckley.)

A. Well, we refer to them as emergency engineer, or—I do not know if that meets your question.

Q. Is it the call of a man who is on the Engineer's Working List or a man who is merely eligible to serve as an engineer?

A. A man eligible for service.

Q. But he is not on the working list?

A. Not on the working list.

Q. Is there any way that the company could avoid paying that [73] guaranteed wage to that fireman called as an emergency engineer?

A. No, there is not.

Q. What provision, if any, is there which prevents the company from avoiding that guarantee payment or avoiding that payment at all?

A. Well, this question and answer that appear there immediately underneath Section 15 in heavy type may operate in that manner.

Q. If it were not for the provision in heavy type, the questions and answers in heavy type, could the company slide by the senior available man and call some other demoted engineer serving as a fireman in an emergency?

A. Yes, they could then, but the question and answer appearing in heavy type prevents us from doing that.

Q. What does that provision do then?

A. This provision here requires us to call the senior demoted engineer.

(Testimony of Cornelius M. Buckley.)

Q. Even though he may be assigned to a run as a fireman?

A. Even though he may be assigned to a run as a fireman, and due to leave the city that evening. We are required to use him if he is the senior available qualified demoted engineer, and regardless of the fact that other qualified demoted engineers may be available in the terminal, we will say, on their lay-over day.

Q. You mean although there are qualified demoted engineers serving as firemen standing by idle; they can't be called?

A. No, that is, if available.

Q. If the company could call the man standing by who was junior to the senior available man, could they by that means avoid payment of that guaranteed assignment?

A. Yes, it is possible that they could. Now, I can think of an instance something like this: Firemen 1 and 2, we will say, are firing passenger runs. No. 1 is due to leave the city this evening at four o'clock. No. [74] 2 is due to leave the city tomorrow evening at four o'clock. We have need of an engineer to operate a yard engine at four o'clock this afternoon. Now, if it were not for this rule, we could use No. 2 as a yard engineer this afternoon and send him out as a fireman on his run tomorrow, and incur no penalty. But because of this rule we are required to take the senior of those two men, use him as an emergency engineer this afternoon,

(Testimony of Cornelius M. Buckley.)

and pay him the difference between what he earned on the yard engine and what he lost on his run as a fireman because we used him as an engineer.

Q. Have you in your experience as local chairman seen the rule operate in that fashion?

A. Oh, yes, yes.

Q. Does it afford any protection to the members of the firemen's craft?

A. Well, it preserves the integrity of Section 15 of their Article XXXVII, and it also preserves the integrity of their seniority rule, which advances men of the higher grade of service in accordance with their service as engineers.

Q. Mr. Buckley, are there in the service of the company any engineers who did not pass through the grade of firemen who became engineers directly as they were employed first as engineers?

A. Well, we have men on the Engineers' Seniority List who were not promoted from the ranks of the firemen on these properties.

Q. What are they called colloquially?

A. They are called hired engineers.

Q. Do those hired engineers now have seniority dates as firemen?

A. Yes.

Q. How did they acquire those seniority dates?

A. That was also the result of the Chicago Joint Working Agreement between the two organizations.

Q. What is their seniority date as firemen?

A. It is equivalent of their seniority date as engineers. [75]

(Testimony of Cornelius M. Buckley.)

Q. The same date? A. The same date.

Q. Prior to the time that these men acquired seniority dates as firemen through the workings of that agreement, did hired engineers on this Company's lines have seniority as firemen?

A. No, sir.

Q. Suppose they were cut off because of lack of business. What do they do?

A. Well, they were just out of employment.

Q. They were furloughed, were they?

A. They were furloughed.

Mr. Mason: That is all, thank you. Cross-examine.

Cross Examination

Mr. Naus: Q. I have very few questions. Mr. Buckley, I do not know that it is entirely in the scope of your direct examination, but approximately when was the Engineers' Schedule, Exhibit 1, distributed after printing? When was it published on the railroad?

A. Well, approximately thirty days.

Q. After what date, thirty days after what date?

A. After the date of signature.

Q. State the date. A. January 9, 1931.

Q. Take Exhibit 2, the Firemen's schedule, the one in evidence here. Approximately when was that published and distributed on the railroad?

A. Approximately—

Q. Within thirty days after what date?

A. Thirty days after June 1, 1939.

(Testimony of Cornelius M. Buckley.)

Q. Now, reference was made in your answers to your Exhibit No. 6, your locomotive mileage, your volume of locomotive mileage. The statement here, Exhibit No. 6 is headed "Statement showing number of locomotive miles accumulated on Southern Pacific Lines (Including former E. P. & S. W.);" before acquisition by the Southern Pacific there was a separate railroad known as the E. P. & S. W., or El Paso & Southwestern; wasn't there?

A. That is correct.

Q. And then at some time the Southern Pacific acquired it and it [76] became an integral part of the Southern Pacific System, Pacific Lines?

A. That is correct.

Q. The Firemen's and Engineers' Schedules that are in evidence here do not embrace the men who were formerly on the E. P. & S. W., do they?

A. No, sir, they do not.

Q. In making up your Exhibit 6 of locomotive mileage, you have included the locomotive mileage on the former E. P. & S. W. Is that merely for convenience or because of the difficulty in breaking it down?

A. Difficulty in breaking down the exhibit.

Mr. Mason: Mr. Naus, I might add this—

Mr. Naus: I am not seeking to attack anything.

Mr. Mason: Just for the guidance of the Court, the former El Paso & Southwestern Line, now part of our Pacific Lines, included the line between Tucson via Douglas and El Paso, the so-called south

(Testimony of Cornelius M. Buckley.)

line in Southeastern Arizona and Southwestern New Mexico, and the line from El Paso to Tucumcari and Dawson in New Mexico, and I think a small branch from Clifton to Lordsburg, in New Mexico. But in any event, if you were to strike out these figures in column "K", the Rio Grande Division, you would practically strike out the El Paso & Southwestern plus 148 miles of the Pacific Lines proper, on which the Engineers' and Firemen's Schedules in evidence operate.

Mr. Naus: Mr. Mason and Mr. Buckley both, it is understood, then, Exhibit 6 cannot possibly accurately show the locomotive mileage, but it is fairly accurate and clearly illustrative of the up and down of railroad traffic in proportion, is that correct?

Mr. Mason: Yes, that certainly is correct.

The Witness: Correct.

Mr. Mason: The exhibit was prepared, as you will recall, Mr. Naus, for the purpose of showing fluctuations, although it could [77] not, because our statistics are not so kept, confine the showing to the line excluding the former El Paso & Southwestern.

Mr. Naus: I understand that. It was explained to me before the case started. I merely wanted to clear that up, because our pleadings are directed to the Pacific Lines, excluding the E. P. & S. W.

Q. Now, Mr. Buckley, we have some figures in one of your other exhibits as to the number of engineers on the seniority list and on the working list from time to time. Just to get another rough com-

(Testimony of Cornelius M. Buckley.)

parison, approximately how many engineers and firemen are there on the lists on the former E. P. & S. W. portion of the Pacific Lines?

A. I really couldn't tell you, because I have never looked that up.

Q. Well, to put it a little differently, on the portion of the Pacific Lines known as the former E. P. & S. W., the craft or class of engineers on that portion is represented by the Brotherhood of Locomotive Engineers, and the craft or class of firemen on that portion is represented by the Brotherhood of Locomotive Firemen and Enginemen, is that correct?

A. That is correct.

Q. Just as it is on the remaining Pacific Lines?

A. Yes, sir.

Q. With respect to that Chicago Joint Agreement, I presume that you are prepared to accept our statement that the termination date was ninety days from August 1, 1927?

A. Yes. I knew it was in 1927, but I didn't know the date or month.

Mr. Naus: Are we agreed on that, gentlemen?

Mr. Richberg: That is agreed to.

Mr. Naus: Q. In speaking of the practice of engineers being cut off the Engineers' Working List and being put back on firing, does the Local Chairman of the Engineers have to do not only with cutting them off the Engineers' List, but putting them back [78] on, or putting more men back on the Engineers' list?

A. Yes, sir.

(Testimony of Cornelius M. Buckley.)

Q. You spoke of Section 1, Article LI, of the Firemen's Agreement, having come from the Chicago Joint Working Agreement, and I understood you further to say that it appeared in each reprint, that is to say, each publication of the Firemen's Schedule since then?

A. Substantially the same.

Q. But it has not always been without protest from the engineers, has it?

A. I understand the Engineers protested it, resulting in this case coming into court.

Q. All I had in mind, Mr. Buckley, was I am sure you didn't want to be misunderstood when you testified on direct examination that that Section 1 of Article LI and now in the present Firemen's Schedule, has appeared in successive reprints since the Chicago Joint Working Agreement, you didn't want the Court to understand it appeared in successive issues of the Firemen's Schedule without protest from the Engineers? You did not want the Court to so understand?

A. They protested its inclusion in the last issue of the Firemen's Agreement.

Q. They protested on its appearance in there?

A. Yes.

Q. Then they sought before that publication to have it deleted?

A. You mean before the Firemen's Agreement was—

(Testimony of Cornelius M. Buckley.)

Q. Before this last publication of 1931 appeared and was distributed on the Railroad?

A. Yes, they did.

Mr. Naus: That is all, if the Court please.

Mr. Richberg: If it please the Court, I have only a few questions to ask the witness. I will not extend this examination.

Cross Examination

By Mr. Richberg:

Q. Mr. Buckley, on the basis of your experience as an officer of both the Firemen's and Engineers organizations, and your subsequent [79] experience as an officer or official of the railroad, may I ask whether in your opinion these mileage regulations which are incorporated in the Firemen's contract, and which is a subject of complaint in the bill of complaint, whether in your opinion those are matters of exclusive interest to one of the organizations or of joint interest to both?

Mr. Naus: If the Court please, I object to that as calling for an opinion. That is one of the very things to be determined by your Honor.

Mr. Richberg: May I point out in this case, if the Court please, it is a question as to whether this is a field of joint interest, but as to that expert testimony certainly is receivable, and I fail to see how you could get a more expert witness than a man who had been representative of both organizations, and now representing the Railroad. I asked

(Testimony of Cornelius M. Buckley.)

the witness whether in his opinion this was a field of exclusive interest to one organization or a matter of joint interest to both. It is a question whether they have an interest in these mileage regulations.

The Court: I will allow the question.

A. It is a question of joint interest, in my opinion.

Mr. Richberg: Q. Speaking now in your capacity as an official of the railroad, would it in your judgment be practical or impractical to have in the engineers' contract rules governing the mileage of an engineer, or increase or reduction of numbers different from the similar rules in the Firemen's Contract governing the demotion of engineers to firemen? In your opinion would it be practical or impractical to have those rules different in the two contracts? A. They are different now.

The Court: He is not asking you that; he is just asking you a hypothetical question. [80]

Mr. Richberg: Q. As to whether these rules could be different rules and be practically applied, or whether it would be more practical to have the same rules?

A. It would be more practical to have the rules the same.

Q. When you said they are different now, what did you mean, Mr. Buckley?

A. I mean there is a slight difference in the mileage rules as they apply in the Firemen's Agree-

(Testimony of Cornelius M. Buckley.)

ment and the corresponding rule in the Engineers' Agreement.

Q. Is that a difference in the rule, itself, or in the construction which is placed on the rule by the different organizations?

A. It is a difference in the wording of the two rules.

Q. That is in one rule, is it? A. Yes.

Q. Will you state that particular rule?

A. I could identify that.

Q. Would you identify the rule you are speaking of?

A. Now, when you compare Article XXXII, Section 6(a) of the Engineer's Agreement with Article XLIII, Section 1, of the Firemen's Agreement, you will find the Firemen's Agreement contains language that the Engineers' Agreement does not.

Q. Can the Firemen's Agreement be applied consistently with the application of the Engineers' Agreement, or are you required to make a choice between applying one or the other in the case of a difference?

A. The Engineers' Agreement can be applied in reducing engineers from the working lists. When we come to place those men reduced from the Engineers' Working List, into the ranks of the firemen, then the Firemen's Agreement must apply, because they have control of that craft from then on.

Q. In other words, you there have a situation where you can apply the Engineers' rule to the

(Testimony of Cornelius M. Buckley.)

amount of mileage an engineer will run, but if the engineer is going to be demoted to fireman, you will have to apply the Firemen's rule to see that he is properly demoted, [81] is that correct?

A. Yes.

Q. If you had that condition applying to all these mileage regulations instead of this small part, would that be a desirable or an undesirable condition compared to the situation where the rules are identical?

A. I don't know as I understand your question.

Q. I say, outside of this where the rules agree at the present time then you have none of this difficulty of applying one principle to reduction of forces of engineers and another to demotion to firemen, but in this particular instance you have to apply two different rules? A. Yes.

Q. I say, do your difficulties increase with the two rules generally affecting the entire mileage regulations?

A. The difficulties would increase if the two rules disagreed as they went on. Just a minute. Now, let me see if I quite get that question.

Mr. Richberg: Your Honor, I do not want to lead the witness.

Q. In other words, Mr. Buckley, if you had to apply one rule to the regulation of the Engineers' Schedule and then had to apply an entirely different rule as to what men would be eligible under the

(Testimony of Cornelius M. Buckley.)

demotion rule to serve as firemen, you would have a gap between the two rules, would you not?

A. Yes.

Q. And the result would be an increasing number of engineers would be out of service as engineers and yet not eligible to become firemen?

A. That would be quite possible.

Q. You have been a member of both of these organizations, Mr. Buckley. If while a member of the Firemen's Organization you were compelled against your will to accept representation by the B. of L. E. in the matter of grievances, would that be a strong inducement on you to join that organization?

Mr. Naus: Your Honor it is not a matter of what this individual's feelings may be, how it would affect him under a given hypo- [82] thesis.

Mr. Richberg: Perhaps the conclusion can be drawn without asking the witness.

The Court: I will sustain the objection.

Mr. Richberg: I think that is all.

Mr. Naus: I would like to ask one or two questions apropos of counsel's questions.

Further Cross Examination

Mr. Naus: Q. Mr. Buckley, you have spoken about the possible difficulty you might encounter when you find a difference in wording of the two rules—for example, comparing XXXII-6(a) with XLIII-1 of the other—is it not the fact you

(Testimony of Cornelius M. Buckley.)

face that same fanciful difficulty if you find the rule in the Firemen's Schedule exactly the same in wording with that in the Engineers' Schedule but finding the respective general committees differing in their interpretation of the language?

A. Well, that would be probable; yes.

Q. Now, take a rule that reads identically in language in both schedules; that is to say, assume for the moment that XXXII-6(a) of the Engineers was the exact wording of XLIII-1 of the Firemen's, and the Firemen's General Chairman asserted one interpretation under given facts, and the Engineers' General Chairman asserted a different interpretation under those identical facts. Which interpretation would you follow?

A. Well, that is a river I would have to cross when I met it. I couldn't tell you now.

Q. In other words, Mr. Buckley, the mere identity in the wording of the rule in the two schedules would not relieve you of the practical difficulty you spoke of, would it?

A. It would assist greatly. [83]

Q. You think there might be less difference between the two Chairmen's interpretations, I take it?

A. Yes, because it would probably be much easier to harmonize their differences under circumstances of that kind than it is now.

Q. Now, you spoke of a joint interest of engineers and firemen under given circumstances. It goes no further than this, does it, Mr. Buckley, that

(Testimony of Cornelius M. Buckley.)

under the Engineers' Schedule you concede that the Engineers Brotherhood have a right to make rules respecting engineers? A. Yes, sir.

Q. But if when engineers are cut off the working list, it is solely the right of the firemen to say under what circumstances they can go back firing, is that correct? A. Yes, sir.

Q. To go a step further, if the Engineers serve notice on you, the Carrier, that they wish to negotiate a new section of the Engineers' Schedule removing the maximum mileage limitation on engineers, the Firemen would have no concern in that, would they? A. No, sir.

Q. It would simply make more clear, would it not, the distinctness of these two crafts in this sense, that as business went down and engineers would go off the working list, they would have to wait until there was more business to run engines for before they could go back to work as engineers?

A. Yes. But I do not know as you understood my reference to the joint interest.

Q. What is your idea of the joint interest?

A. Let's turn it around and work it the other way. When we would raise the minimum allowances that would be permitted engineers—say we would raise that to 3000 or 3500 miles—naturally the firemen are going to be very much interested in that, because if they cut off engineers while they are earning 3500 miles per month and place them back in the ranks of the firemen, it becomes a matter of con-

(Testimony of Cornelius M. Buckley.)

siderable concern to the firemen who will lose their positions [84] as a result thereof. That is where the joint interest comes in that I had in mind.

Q. Assume a situation where there was nothing in either schedule giving the engineer cut off the right to go back firing. Assume the absence of that. That is to say, assume a situation where an engineer cut off the list has no right to go back firing under their schedule and must wait for more business to go back running an engine. Under such a situation, do you say there would be a joint interest in both crafts as to the number of miles an engineer could go?

A. No, sir.

Q. Pardon me?

A. No, sir.

Q. So you go no further in your statement about a joint interest and you mean no more by your answer, do you, Mr. Buckley, than that such a joint interest, as you call it, might exist so long as there is a provision permitting an engineer to go back firing?

A. Yes, so long as there is a movement between the two groups or the two crafts based upon the mileage earnings of the upper craft, which has its effect upon the junior craft.

Q. Now, as a matter of fact, isn't it a matter of self interest for the firemen to have a provision in there permitting engineers cut off to go back firing, because in the absence of that no senior fireman would ever want to give up his firing position and take a low engineer's job?

(Testimony of Cornelius M. Buckley.)

A. No, he would not.

Q. Pardon me? A. He would not want to.

Q. As a matter of fact, it is a matter of self-interest, not joint interest but self-interest, of the fireman for the men who have the highest seniority to have a rule permitting one to go back firing, otherwise they would never quit firing and start to run engine, isn't that correct?

A. That is correct—I assume it is.

Mr. Naus: That is all. [85]

Mr. Mason: No redirect examination.

The Court: Proceed, then.

Mr. Mason: That is all, Mr. Buckley.

That closes the case in chief for the Defendant.

Mr. Richberg: We have some material to present, if the Court please, in behalf of the Intervener, and before calling a witness I should like to offer two compilations which have been presented heretofore to counsel for the plaintiff, and, I understand, are acceptable as to what they show. One consists of a compilation of the rules in the Engineers' and Firemen's Agreements, covering the rights of promoted and hired engineers to take assignments as firemen before and after the Chicago Joint Working Agreement. You have copies of this, Mr. Naus?

Mr. Naus: Yes, your Honor. Counsel is entirely correct in stating that copies of that were given not only to the plaintiff but to the defendant Railroad

(Testimony of Cornelius M. Buckley.)

substantially in advance of the hearing here. We find no inaccuracies in that, and I stated in advance I would make no objection; but in looking it over since, Mr. Richberg, I find on page 10, the sixth line from the top, the word "assurance". We can agree, can we not, the assurance spoken of there was an assurance given by the Railroad and not an assurance given by the Brotherhood of Locomotive Engineers?

Mr. Richberg: I think there is no question about that.

Mr. Naus: With that understanding I will make no objection to the offer.

The Court: No. 7.

Mr. Richberg: I would like to offer this Exhibit 7:

(The document in question was thereupon received in evidence and marked "Exhibit 7.")

[Set out at page 637 of this printed record.]

Mr. Richberg: The second document to which I refer is a [86] compilation consisting of extracts relative to the representation rule from the Engineers' and Firemen's Agreements on the Southern Pacific. This also has been furnished to counsel for both parties. I understand there is no question of the accuracy of that document.

Mr. Naus: That is one that we also had an opportunity to examine in advance and to which we make no objection.

Mr. Richberg: I offer this as Exhibit 8.

The Court: No. 8.

(The document in question was thereupon received in evidence and marked "Exhibit 8.")

[Set out at page 660 of this printed record.]

Mr. Richberg: I think it would be appropriate also to offer as an exhibit, if the Court please, this report of the Emergency Board appointed April 14, 1937, to pass upon a similar proceeding and controversy on this railroad, involving the same organizations, although also two others. The reason for offering the exhibit particularly, if the Court please, is these reports are not available in the ordinary form by references to books, such as the opinions of the courts, and being the findings of an emergency body, are not available, so far as I know, except in a few publications, in the form of Government Printing Office Reports. So in order to bring it forward properly to your Honor's attention and preserve it as a matter of record, I think it would be appropriate to offer it as an exhibit.

Mr. Naus: If the Court please, in being offered as an exhibit in evidence here, I will say this: I make no objection that it is a copy. I concede that it is a true copy of an original document, a copy of the document that it purports to be. I make no objection based upon foundation. I do object, however, to the reception of it as an exhibit in this case upon the ground that [87] it is hearsay, it is opinion, it is conclusion, and it is res inter alios

acta. I might point out to your Honor it is a report of an Emergency Board, which is a body selected under Section 10 of the Railway Labor Act. It is a board that does not swear witnesses, does not follow the rules of evidence, and makes no adjudication whatsoever. It simply gives its version of the facts in a haphazard, hurried way to the President in a wave of public opinion, and adjudicates nothing in the sense of a court, and is binding on no one, and it is addressed chiefly to the strike ballot issued by the Firemen and a controversy primarily between them and the Carrier. But I repeat that I do not object on the ground that proper foundation has not been laid; I concede it is a true copy of what it purports to be, and if the original were here, or a certified copy were here, it would be identical. But I object on the ground it is hearsay, opinion, conclusion, and *res inter alios acta*.

The Court: In other words, it has no legal bearing on the issues here?

Mr. Naus: I do not think it has any legal bearing on the issues here. Besides that, it so happens neither the laymen nor the two more or less active lawyers who made up that body listened or heard the facts properly. They listened to the facts in a hotel room, or, rather, what I believe to be incorrect views that they formed, and entertained in a hurry at that time.

Mr. Mason: Your Honor, answering the other objections, I have not offered this, but I think the face of the report will show it was not a proceeding

between other people in so far as the purpose for which the document is offered is concerned. These two organizations, through their General Committees, and the same counsel except Mr. Naus who are present here were present at the [88] same time and participated in the proceedings.

The Court: It is not of any legal significance here. It may be received as Exhibit A, anyway.

Mr. Richberg: That would be Exhibit 9?

The Court: No. Exhibit A only, for identification.

[Note: Exhibit A for identification is set out at page 726 of this printed record.]

Mr. Richberg: May I point out to the Court the situation as to these boards, because there is subsequently involved, also, the question of the Mediation Board. Mr. Naus' description of the Emergency Board bears no relation to a careful examination of the Act or the actions of the Emergency Board. I assume that arises simply by reason of his lack of acquaintance with it.

The Court: I see no objection, if you are going to write briefs on this, to state that that Board considered that case. I understand it is not a legal tribunal to determine that point.

Mr. Richberg: This is the point I wanted to make, your Honor. As a matter of fact, this tribunal can summon witnesses—I think I am correct—and it is a part of the administrative machinery for the enforcement of the very Act which your Honor is asked to construe. The continuing body under that

machinery is the National Mediation Board, which is a continuing enforcing body and has official duties, and we expect to offer certain determinations of that Board which are relevant. We believe they are entitled to your Honor's consideration.

The next step in the proceedings, if the Mediation Board is unable to settle the controversy, is to have an Arbitration Board appointed, and the Arbitration Board under those circumstances makes an award which is binding and enforceable in the Federal Courts. That certainly has legal standing. If one or both of the parties have declined arbitration and therefore the Act cannot have its purposes consummated in that way, the Act then [89] provides that upon certification to the President that there is danger of a serious interruption of interstate commerce, he can create an Emergency Board for the purpose of collecting the facts and reporting to him within the thirty-day period, during which there can be no change in the condition—in other words, any strike is prevented during that period. This Board exercises a very high function, and these Boards have been appointed with the greatest care. The members of this particular Board—all of them—had been appointed on previous boards appointed by the President, and were men thoroughly familiar with the conditions in the railroad industry. They had to, under the law, take evidence quickly, formulate their conclusions, and report them. But, as I pointed out to your Honor, in the history of the

Railway Labor Act I think there has been no case in which the recommendation of the Emergency Board did not provide a solution of that controversy. Therefore, the finding of that Board is far above the casual and scurrilous statement of counsel in an attempt to discredit their conclusions. If they are worthy of the consideration of the President of the United States, we certainly think they are worthy of consideration of any court where precisely the same controversy is sought to be determined.

Now, if it please your Honor, I want to call one witness—and I hope we can make the examination reasonably brief—as I stated, for the purpose of clarifying the operations under the Railway Labor Act of the Railroad so as to clarify the allegations in the pleadings and make an easier interpretation of the Act, itself.

Mr. Robertson.

If the Court please, before I put Mr. Robertson on the stand, I should have asked for a stipulation similar to that which was [90] obtained by counsel for the Plaintiff as to the following provisions in the second defense offered by the Intervener, page 4 of the Answer, which reads as follows:

“The Brotherhood of Locomotive Firemen and Enginemen is and was at all times herein mentioned an unincorporated voluntary association, and Intervener at all said times was and is now an unincorporated voluntary association organized under the authority of said Brotherhood.”

Mr. Naus: I so stipulate. That is the companion situation to the Engineers.

Mr. Richberg: That is right.

Mr. Mason: The Defendant will join in that stipulation.

DAVID B. ROBERTSON,

called as a witness in behalf of the Intervener, being first duly sworn by the Clerk of the Court, testified as follows:

Direct Examination

Mr. Richberg: Q. Your name is David B. Robertson? A. Yes.

Q. Mr. Robertson, what is your present position?

A. President of the Brotherhood of Locomotive Firemen and Enginemen.

Q. When were you elected to that position?

A. July 1, 1922.

Q. When did you first engage in railroad employment? A. January 25, 1895.

Q. When did you begin to fire a locomotive, and for how long did you serve as fireman?

A. I started to fire a locomotive in November, 1898, and I served until June 19, 1902.

Q. Did you then begin service as an engineer?

A. Yes, sir.

Q. What official positions have you held in the Brotherhood of Locomotive Firemen and Enginemen, and will you state during what period you served in each position?

(Testimony of David B. Robertson.)

A. I was the President of the Local Lodge which I joined in 1899 for two years, and then I was the Local Chairman for two years. I [91] was then elected General Chairman in 1905 on the railroad where I was employed, the Erie Railroad, and served in that capacity until 1913, when I was elected Vice-President of the Brotherhood. I served from 1913 as Vice-President until July 1, 1932, when I was elected president.

Q. And you served continuously as President since that time? A. Yes, sir.

Q. As a result of your service as an officer of the Brotherhood, are you familiar with the contracts between the railroads throughout the country generally and your organization, and particularly with the development of contractual relations between your Brotherhood and the Southern Pacific Railroad Company? A. Yes.

Q. What classifications of employees are members of your Brotherhood?

A. Engineers, Firemen, Hostlers and Hostler Helpers.

Mr. Richberg: By the way, statement was made earlier as to the total membership of the Engineers Organization, which was 62,000, was it not?

Mr. Naus: Sixty thousand plus.

Mr. Richberg: Q. What is the membership of the Brotherhood of Locomotive Firemen and Enginemen at the present time?

A. The first days of this month it was 84,819.

(Testimony of David B. Robertson.)

Q. Approximately how many engineers, that is, men with seniority dates as engineers, are members of your Brotherhood throughout the country?

A. Between nineteen and twenty thousand.

Q. In the course of your official duties is it necessary for you to familiarize yourself with the contracts also that the Brotherhood of Locomotive Engineers has with the various railroads, and particularly with the Southern Pacific?

A. Yes, sir.

Q. How many members of your Brotherhood are employed in engine service by the Southern Pacific? By that I mean in all branches [92] of the service.

A. Including Hostlers?

Q. Yes.

A. Between twenty-three and twenty-four hundred.

Q. That is, firemen, enginemen, hostlers, and hostler helpers?

A. Yes, sir. This month it will show about twenty-five.

Q. How many of your members are classified as engineers out of that group?

A. About nine hundred.

Q. So about nine hundred out of twenty-four hundred are engineers?

A. Yes, sir.

Q. Are some of your members also members of the Brotherhood of Locomotive Engineers?

A. Yes, sir.

(Testimony of David B. Robertson.)

Q. You have here and throughout the country what are called double headers?

A. Yes, sir.

Q. Men who maintain membership in both organizations? A. Yes, sir.

Q. In the early days of your organization was there any duplication of membership between the two organizations? A. No, sir.

Q. Will you explain briefly how the present duplication developed?

A. Well, it came about by reason of the fact that after the Firemen's Organization had been in existence for a few years, they created insurance departments for the purpose of furnishing insurance to the men in service, and when the men who were members of the Firemen's had reached the point where they were to be called for promotion to the position of engineer, they had their insurance in our department, and as a result of that, at a low rate, they were influenced to remain with us because they were older, and if they took insurance in the B. of L. E., it would cost them more. That was generally the reason why.

The further fact might be added that when a man is first promoted, he spends considerable time in working as an extra engineer—in other words, he may work a few months as an engineer, go back as a fireman, and during all that period he hasn't much [93] desire to change his status as a loco-

(Testimony of David B. Robertson.)

tive fireman and then again, if he did change, it would affect his insurance.

Q. So there are many reasons why firemen should retain membership in your organization even after they have been promoted to be engineer?

A. A great many of them do.

Q. Some of them sometimes join the Engineers Organization and retain both? A. Yes.

Q. Will you state when the first provisions for demotion of engineers were written into your agreement between your Brotherhood and the Southern Pacific?

A. The Agreement is dated April 1, 1907 and the provisions are effective on March 18, 1908.

Q. In the compilation which has been presented here as Exhibit 7,—you have seen that compilation, haven't you, Mr. Robertson? A. Yes, sir.

Q. May I summarize it briefly by saying—Is it the fact that it shows from 1907 down to 1927 the provisions for the demotion of engineers and the terms on which they should be demoted were written exclusively in the Firemen's Agreement?

A. That is what it shows, yes.

Q. There is no such provision in any of the Engineers' Agreements during that entire period, is there? A. No, sir.

Q. Prior to this first provision in 1907 for the demoting of Engineers was there any uniform or established practice on the railroads generally or

(Testimony of David B. Robertson.)

on the Southern Pacific in regard to men returning to firing service? A. No, sir.

Q. That was done in some instances, was it not?

A. Yes, sir.

Q. But under different rules?

A. Yes, every railroad made its own rules.

Q. There has been some testimony heretofore about the Chicago Joint Agreement. I think I am correct in saying that was an agree- [94] ment between the Firemen and the Brotherhood of Locomotive Engineers governing matters of joint interest to them in the railroad schedules; am I correct?

A. Yes.

Q. That agreement as heretofore referred to is dated May 17, 1913. Am I correct in understanding it went into effect on July 1st of the same year?

A. That is right.

Q. Will you state in brief form the substance of those provisions?

Mr. Richberg: If the Court please, the entire Agreement has not been introduced here; only sections have. I thought it would be helpful to state the general substance.

Mr. Naus: If the Court please, I have no objection to its being a copy of the Chicago Joint Agreement, and I have no objection to that document going in. I do object to the witness giving his version of it, substance of it.

Mr. Richberg: I do not want to press it.

(Testimony of David B. Robertson.)

Mr. Naus: If you have any particular provision, I will make no objection to your reading it.

Mr. Richberg: I think perhaps the shortest thing to do would be to introduce the copy of the Agreement itself.

Mr. Naus: Yes.

Mr. Richberg: Q. Have you a copy of the Agreement which I can use?

A. This is the original. This is the First Amendment and this is the Second Amendment. (Indicating.) That is the last one that went into effect.

Mr. Richberg: I have here three documents, if the Court please. One is the Chicago Joint Agreement, May 17, 1913; the other is dated May 17, 1913, but as revised at Cleveland May 4, 1918, and the third is as revised at Cleveland May 4, 1918 and May 1, 1923. I understand these three represent the Chicago Joint Agreement during the period in which it was in effect between the [95] two organizations. I will ask, if the Court please, that the first in time be marked—am I correct—Exhibit A?

Mr. Naus: I might say, if the Court please, that I accept each of those documents as authentic. While there are three documents physically being offered, it is the same agreement all the way through. There was the original agreement in 1913, and then there was an amendment or revision in 1918, and a later amendment or revision in 1923. This shows the three forms of it, and that is the one that the stipulation

a while ago showed a termination of ninety days after August 1, 1927.

The Court: 9-a, b, and c in chronological order.

(The documents in question were thereupon received in evidence and marked Exhibits 9a, 9b, and 9c, respectively.) [Set out at pages 669, 684 and 701 of this printed record.]

Mr. Richberg: You have no objection to this?

Mr. Mason: No, I have no objection.

Mr. Richberg: Q. Following the adoption of this agreement, Mr. Robertson, were the provisions of that agreement written into various contracts between the Brotherhood of Locomotive Firemen and Enginemen and the Railroads throughout the country, and particularly written into the contract made between your organization and the Southern Pacific Railroad?

Mr. Naus: Mr. Richberg, you do not mean all the provisions of the Joint Agreement; some of them?

Mr. Richberg: No, some of them.

The Witness: Yes, sir.

Mr. Richberg: Q. And the documents heretofore offered showing the development of these rules incorporate in them quotations from the Chicago Joint Agreement written into the Southern Pacific Agreements, which to your knowledge are correct, are they not? A. Yes, sir. [96]

Q. Is it also a fact that some of the provisions of the Chicago Joint Agreement were written into the contracts between the Brotherhood of Locomotive Engineers and the Southern Pacific?

(Testimony of David B. Robertson.)

A. Yes, sir.

Q. Not all the same ones that were written into your contract, however?

A. Not all of them.

Q. It has been heretofore testified that that Agreement was abrogated in 1927.

Mr. Naus: Ninety days after August 1, 1927.

Mr. Richberg: Q. Ninety days after August 1st, is that correct?

A. It was abrogated effective in October 1927.

Q. That was an action by the Brotherhood of Locomotive Engineers?

A. Yes, sir.

Q. Following the abrogation of the Chicago Joint Agreement what changes were made in the Engineers' Contract with relation to the demotion of engineers and the railroad mileage provisions?

A. There were very few changes made with regard to the demotion of engineers on any of the railroads except that here and there steps were taken by the B. L. E. to modify the Agreement so as to change the conditions under which the men would be demoted by raising the mileage.

Q. That was not done on the Southern Pacific Railroad, was it, as to changing the mileage?

A. No, sir.

Q. Were there disputes which developed between the Brotherhoods and the various railroads as the result of the abrogation of the Chicago Joint Agreement?

A. Yes, sir.

(Testimony of David B. Robertson.)

Q. Did one of those disputes develop on the Southern Pacific? A. Yes, sir.

Q. Was that the cause of the strike vote which was taken in 1937? A. Yes, sir. [97]

Q. As a part of that strike vote was involved a controversy between your organization and the railroad as to agreements they made with the Locomotive Engineers? A. Yes, sir.

Q. It was that controversy that then finally went to the Emergency Board to which reference has been made? A. Yes, sir.

Q. And it was on that controversy that the Emergency Board reported? A. Yes, sir.

Q. That is the report which has been marked here as Exhibit A? A. That is correct.

Q. Following the report of the Emergency Board what changes were made in the contracts between the two organizations and the Southern Pacific which were related in any way to the action of the Emergency Board?

A. Well, the Agreement that had been previously negotiated between the management and the B. L. E. was abrogated, and the provisions governing the part-time mileage, that is, a man who worked part of the month as an engineer and part of the month as a fireman, were written into our contract.

Mr. Richberg: May it please the Court, I am not asking the witness further as to the details of that controversy because they are set up in a more impartial manner in the report of the Emergency

(Testimony of David B. Robertson.)

Board, and reference can be had there in the report to the statement of facts of that controversy.

Q. I want to call your attention, Mr. Robertson, to the provision in the Railway Labor Act of 1926, Section 3, First C, and in the amendments to the Railway Labor Act of 1934, Section 3 First I, particularly to one phrase which appears in both places which refers to the handling of grievance disputes, the phrase reading as follows:

Mr. Naus: You refer to the 1926 section?

Mr. Richberg: I refer to the 1926 section, 1934 amendment, [98] to show it was common to both. I make reference at the present time to the Act in the United States Code. I will give the correct reference to the section that appears in the Code now, as Section 153 in paragraph I.

Mr. Naus: 3 First I.

Mr. Richberg: It reads as follows:

"The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes."

Q. With your familiarity, Mr. Robertson, with the practice on the railroads over a long period of

(Testimony of David B. Robertson.)

years in the handling of grievance disputes, what is meant by "the usual manner" in which disputes are handled? What is the usual manner in which such disputes are handled?

Mr. Naus: One moment, if the Court please, I object to the question as merely calling for an opinion as to what this statute means. He has read the statute to him and now asks, "Now, Mr. Witness, what does that statute mean?"

Mr. Richberg: If the Court please, I read the statute and called attention to a certain portion. Then I rephrased my question to ask the witness: What is the usual manner of handling disputes on the railroads?

The Court: I will allow the question in that form.

A. The usual manner of handling disputes of questions on the railroad is the same today as it was when the statute was written. [99] Two practical railroad officials and two practical railroad men, members of the organizations interested in this law, framed it with the assistance of counsel on both sides. When we drafted the law and undertook—

Mr. Naus: One moment, if the Court please. The witness is departing from the question. He is launching off into who drew the law. What has that got to do with the question? I will ask that the answer go out as not responsive.

The Court: It goes out. Read the question.

(Testimony of David B. Robertson.)

Mr. Richberg: Mr. Robertson, if you will confine your answer to the question:

“What is the usual manner of handling grievances?”

A. The usual manner of handling grievances to-day, if a man has a grievance he takes it to his local lodge—I am speaking now of the B. of L. F. & E.—takes it to his local lodge and files it. If the Lodge thinks he has a meritorious case, they refer it to the local chairman to handle it. He takes it up with the local official. On some railroads you are required to take it up with the mechanical department officials. On others you take it up with the operating department officials. The usual manner is, it is referred to the local committee by the man who has a grievance, referred to the local committee or lodge of which he is a member, and he takes it up and handles it with the local man, and when he has failed to reach a settlement, it is then referred to the general chairman. The general chairman then takes it up with the local officials. If he fails, he usually calls on the organization, the Grand Lodge of his organization, to send an officer, who then takes and handles it with the higher official, and if they fail to make a settlement, they invoke the other portions of the Act—mediation, arbitration, and in [100] some instances the appointment of an Emergency Board. That is the usual manner.

(Testimony of David B. Robertson.)

Q. It is a fact, Mr. Robertson, certain types of grievance cases are handled which go eventually to the National Adjustment Board set up under the Act for final determination of such cases?

A. That is true.

Q. Is it also a fact that before that Board the individual employee is represented by designated representatives of the organization who have handled the case for him heretofore?

A. Yes, sir.

Q. I also call your attention to the provision in the present Railway Labor Act, Section 152, paragraph 4, to which reference has heretofore been made, and which reads as follows:

“The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act.”

I will ask you if this declaration of the right of the majority of the craft or class changed in any way the previously existing custom or practice of the two Brotherhoods that represent respectively the Engineers and Firemen? In other words, were they accustomed prior to this to be represented for collective bargaining by the organization representing the majority of the craft?

A. They were, yes.

Mr. Naus: One moment. I ask that the answer go out for the purpose of the objection. I object to

(Testimony of David B. Robertson.)

that as calling for an opinion and legal conclusion. If the Court please, the Supreme Court never spoke on the Act of 1934 until March 1937, and it is not very long after that before this suit was filed, as time goes, and how are we concerned with what the practice may have been elsewhere? We are talking about the Pacific Lines of the Southern Pacific. The evidence so far shows we did not acquiesce [101] in this Firemen's Schedule. It was not printed until December of 1939 and, too, I think it was within a month or two after that schedule was printed and published that this suit was filed. What is the point of this witness giving his opinion as to the practice on some other occasion?

Mr. Richberg: I did not ask that. The question asked the witness was whether this declaration of a right changed the preceding practice as a matter of history. I did not ask his opinion at all. I asked whether this was a fact that this was the practice between the organizations and the railroad prior to its being written into the Act.

The Court: I will allow the answer to stand.

Mr. Richberg: Q. Turning now to the question of representation, Mr. Robertson, has your Brotherhood ever claimed the right to represent a member or a non-member having a grievance dispute against the wishes of the employee who had the grievance?

A. No, sir.

Q. Has your Brotherhood ever claimed the right to control the settlement of a grievance of a member

(Testimony of David B. Robertson.)

or non-member who did not wish to be represented by your Brotherhood in the settlement of his grievance? A. No, sir.

Q. Has there been differences between your organization and the Brotherhood of Locomotive Engineers and this Railroad and elsewhere regarding the right of representation of members in grievance disputes? A. Yes, sir.

Q. Has that been raised by the claim the Brotherhood of Locomotive Engineers has a right to represent members of your organization in certain disputes? A. Yes, sir.

Q. Has this matter been the subject of discussion, consideration, and action by the National Mediation Board, whose services have been brought in under the provisions of the Railway Labor Act?

[102]

A. Yes, sir.

Q. Have you a copy of the letter written by Judge Carmalt, a member of the National Mediation Board, on January 4, 1936, addressed to the Chief Executives of the two Brotherhoods, the Engineers and the Firemen, expressing the opinion of the National Mediation Board as to the proper consideration of the law concerning representation of employees in grievance cases? A. Yes, sir.

Mr. Richberg: I have a copy of that letter. Mr. Robertson has the original. As I have stated, if your Honor please, it is addressed to the Executives of the two organizations, stating the official opinion

(Testimony of David B. Robertson.)

of the National Mediation Board which, I may say in brief, was to the effect that the claim of the Brotherhood of Locomotive Engineers was unlawful and contrary to the Railway Labor Act.

Mr. Naus: I make no point about the authenticity of the letter or its signature, so far as its being a genuine document is concerned. I make no point as to the foundation of the offer of a copy. All that I waive. I object to the letter itself as being nothing but opinion and conclusion and in no way binding upon this Court.

The Court: It will be marked B for identification.

EXHIBIT B

For Identification

National Mediation Board

Washington

January 4, 1936

Messrs. A. Johnston, Grand Chief Engineer
Brotherhood of Locomotive Engineers
1118 B. of L. E. Bldg.
Cleveland, Ohio

D. B. Robertson, President
Brotherhood of Locomotive Firemen &
Enginemen
318 Keith Bldg.
Cleveland, Ohio

Gentlemen:

Please be referred to my letter of August 12, 1935, and the several conferences we have had concerning

(Testimony of David B. Robertson.)

my proposal to endeavor in some manner to compose some of the differences between your Organizations. After a careful study of the history of the differences and the circumstances and conditions surrounding the cases now pending before the National Mediation Board, I have reached the conclusion that it is too early to make definite proposals that reach beyond the scope of the cases now pending before the National Mediation Board. On September 11, 1934, the Board addressed the Railroad Labor Executives Association on the subject of jurisdictional disputes and advised that to the extent we were empowered under the Railway Labor Act we would decide such cases as were brought before us, but the differences between your Organizations have become so far reaching; that they can only be cleared by fundamental changes in policy by both Organizations or by some sort of amalgamation, association or joint contract which would bind both Organizations locally as well as nationally.

However, some method of composing the differences must be adopted if the Organizations are to maintain peaceful relations with the railroad employees. While it is no proper function of a Member of the National Mediation Board to suggest policies that should be followed by the Organizations, it is appropriate that we point out to you that a continuation of the jurisdictional warfare now apparently under way is likely to thwart the main purposes of the Railway Labor Act so far as your Organizations are concerned.

(Testimony of David B. Robertson.)

Managements will be in position to take advantage of the feeling of antagonism that has grown in each Organization against the other, in the belief that while fighting against one another your attention will be diverted from dealing with the relations of your memberships with the managements. In certain in-

—2—Messrs. A. Johnston

D. B. Robertson

stances one or the other of your Organizations is working under the domination of management in a manner to develop evils akin to those of company unions. I doubt whether your membership appreciates to what extent the effective strength of the Organization is being undermined.

Your Local Organizations must be controlled so that peace and harmony may exist between them. If this can not be done there is defective organization that if not speedily corrected by convention action is likely to result in a very great lack of efficiency and, to the extent that cases are handled by the National Mediation Board, the machinery of the Railway Labor Act will be impaired. I assure you that my interest in bringing about happier relations between your Organizations is without the slightest bias for or against either Organization. I am interested only in a development of the most efficient service for the membership that can be developed under the Law, but a review of the juris-

(Testimony of David B. Robertson.)

dictional disputes now pending before the Board will serve to demonstrate that some mutually satisfactory set of principles must be established that will be binding upon the Organizations, their officers and members or else the Board can find no basis of settlement of the cases before it. This proposition must be faced by the Organizations before any effective action can be taken under the Law.

History of Disputes Between 1928 and 1934

The Chicago Joint Agreement kept peace between the Organizations from 1913 to 1927, but the limitation of mileage therein prescribed was in itself objectionable to the older men. Their objections to it became intensified by the interpretation insisted upon by the B. of L. F. & E., whereby all emergency mileage was charged to determine the average mileage made by the men on the extra board whether or not it was made by the men on the board. By this interpretation of the rule the B. of L. F. & E. often succeeded in regulating the number of men on the engineers' board so much as to limit the mileage made by the men thereon far below the minimum mileage which would have justified reducing the board. By this process, the work available for firemen was greatly increased. The abrogation of the Agreement by the B. of L. E., however, served to free the B. of L. F. & E. in 1928, and thereafter to make mileage limitations for the men in the Firemen's group far below that that had been maintained

(Testimony of David B. Robertson.)

under the Chicago Joint Agreement, and as more and more men were demoted through the depression, the antagonism of the older men to any mileage limitation has become almost an obsession.

This has presented one of the fundamental objections to amalgamation of the two Organizations. The B. of L. E. is not willing to submit the question of mileage limitation for engineers to a majority vote of the membership of the two Organizations. And the Organizations are so far apart on this question that it may be necessary to leave out any consideration of it in a joint working agreement except to provide rules for the regulation of mileage of part-time men. Of such a rule I shall speak later.

—3—Messrs. D. B. Robertson

A. Johnston

After abrogation of the Chicago Agreement, the B. of L. F. & E. took over the engineers' contract on the Georgia, Southern & Florida. Whether or not the specific facts involved in that case furnish a justification for the action taken by the B. of L. F. & E. is a very controversial question. A good argument could be made, perhaps, for either one of the Organizations in respect of this matter according as one interprets the facts; but it does not admit of argument that the B. of L. F. & E. would have been prohibited from taking over the contract if the

(Testimony of David B. Robertson.)

Chicago Joint Agreement had remained in effect. The fact that the Organization took advantage of the abrogation of the Chicago Agreement by the engineers much intensified the controversy between the Organizations. In the long range view, it would seem to have been an unwise thing to do. It may be remarked in passing that the litigation which ensued over the right in an election for representation to vote as engineers promoted men who, at the time of the election had been demoted to the firemen's ranks, resulted in the decision which the National Mediation Board has followed as a sound interpretation of the Law in making up eligible lists for elections in other crafts.

There followed an attempt by the B. of L. F. & E. to take over the engineers' contract on the Florida East Coast. As is well known the firemen had no contract for firemen on that property. Their strike many years ago was unsuccessful and the management filled the jobs with negroes. During all of the subsequent years the B. of L. E., holding the contract for engineers, has been unable to negotiate with the management that provision of the Chicago Joint Agreement which would give seniority rights to engineers in firemen's jobs in case of demotion on account of reduction in force. Had that provision been made effective, it is probable that the subsequent disputes between the Organizations would not have occurred. There is much difference of

(Testimony of David B. Robertson.)

view as to whether or not it was feasible to have made such a provision in the engineers' contract, but it would seem that some progress in that direction might have been made had sufficiently strong steps been taken by the Engineers' Committee.

In later years, it is said, that at the solicitation of the management the General Chairman of the B. of L. E. has individually acted as representative of the negro firemen upon payment by them to him of compensation for such service, at a time that his own demoted engineers were walking the streets in idleness, while the unorganized negroes were protected in their positions firing oil-burning engines.

Whatever the merits of this dispute or the desires of the membership of the B. of L. E., it is certain that the taking over of the engineers' contract by the B. of L. F. & E. is as much a violation of the spirit of the Chicago Joint Agreement as was the case on the Georgia, Southern & Florida, and it is

#4—Messrs. D. B. Robertson

A. Johnston

equally questionable whether in the long range view it is the wise move to have made.

On the other hand, the B. of L. E. is said to have made effort to take over the firemen's contract on a considerable number of roads, but I find no record that any of these cases reached the former Mediation Board or the Courts. Whether such cases were

(Testimony of David B. Robertson.)

developed as reprisals for the action of the B. of L. F. & E. in the two cases heretofore cited or were begun because of local uncontrolled activity, the policy in the long range view is as objectionable as that of the B. of L. F. & E. in the two cases cited.

Subsequent to the abrogation of the Chicago Joint Agreement, effort was made by the B. of L. E. to have the contracts on many railroads so amended as to give to the General Adjustment Committee of the Engineers the exclusive right to represent engineers in disputes with management. This contention, as well as that of the two cases heretofore cited, ignores entirely the provision of the Chicago Joint Agreement in which it was conceded that the jurisdiction of the B. of L. E. extended over the craft of engineers, and that of the B. of L. F. & E. over the employees engaged as firemen, hostlers and hostler helpers, with the further proviso that the members of each Organization had the right to call in the Committee of their own Organization to represent them in grievance cases but under the interpretation of the contract made by the Organization which held the contract. On only one Class I Railroad did the engineers succeed in getting the exclusive right of representation. The policy of the B. of L. E. in this regard is not only in violation of the Chicago Joint Agreement but is also in violation of the amended Railway Labor Act, as will be discussed later.

(Testimony of David B. Robertson.)

**Cases Arising Under the Amended
Railway Labor Act**

The first case of importance arising under the amended Railway Labor Act is that brought by the B. of L. F. & E. requesting the establishment of a rule on the International-Great Northern, which would give to the members of the B. of L. F. & E., when acting as engineers, the right to have the General Chairman of that Organization represent them in grievance cases. It has not been possible to bring about a settlement of this case for the reason, that owing to local conditions the Company has declined to serve notice to open that provision of the engineers' contract which gives to the B. of L. E. the exclusive right of representation of engineers. This Board has ruled that a contract giving exclusive right of representation for grievance cases to any Organization is unlawful under the amended Law. It said in a letter to the management:

#5—Messrs. D. B. Robertson

A. Johnston

The National Mediation Board is compelled to view as a matter of law that the supplemental contract effective October 17, 1928, with the B. of L. E. is absolutely illegal, since the Company interprets it to give to the engineers' committee a right to represent any employee who

(Testimony of David B. Robertson.)

desires another representation. No contract between a railroad employer and an organization of employees can give to that organization any right to represent an individual employee unless the employee himself assents. The right of an individual to designate the representative of his choice is guaranteed by Section 2, (Second) and the carrier is prohibited by Section 2, (Third) from interfering, influencing, coercing or seeking in any manner to prevent the designation by its employees of their representatives. There is no possible escape from this conclusion as it seems to us, since Section 2, (Eighth) provides that Paragraph Third of the Section is made a part of the contract of employment between the carrier and each employee.

Controversy between the Organizations on this Railroad is the outgrowth of local conditions for which the General Chairman of the B. of L. F. & E. was originally largely responsible but management took advantage of it to make this representation contract—of doubtful validity when made and now clearly in violation of the amended Railway Labor Act. Wherever the original fault may have laid, operation under the exclusive representation rule not only practically denies any representation under either contract for the members of the B. of L. F. & E. but produces a relationship between management and all employees in engine service that serves no good purpose.

(Testimony of David B. Robertson.)

Mileage Limitation

This question has come to the Board in only two cases, but they illustrate the necessity for some sort of agreement between the Organizations. Both Chief Executives have agreed that the principles which the Board set out on this question in its letter of November 30, 1934, were sound and should be applied in settling the question of mileage limitation for part time men. It so happens that control of the part time men on the Texas Pacific is in the hands of the B. of L. E., while that on the Reading is in the hands of the B. of L. F. & E. The Chairman of the Board made some efforts to mediate the case

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D. B. Robertson

filed on the Texas & Pacific, and the General Chairman of the Engineers, while admitting that the rules in vogue there are in violation of the principles agreed upon by the Grand Chiefs, insists that the rule under which the engineers are operating is for their benefit and cannot be changed by the Grand Chief Engineer under the laws of the Organization. So long as that condition exists on the Texas & Pacific, the B. of L. F. & E. refuses to make any change in the rule which works in favor of the firemen on the Reading.

It seems clear that the two Organizations cannot be brought into agreement with respect to a proper

(Testimony of David B. Robertson.)

mileage limitation for men holding regular assignments and the rule on this subject that can be agreed to will apply only to part time men. But a standard rule for these men along the lines agreed to by yourselves and set down in our letter of November 30, 1934, can and should be made binding upon the two organizations.

As the whole question of mileage limitation is the most fundamental obstacle to an amalgamation of the Organizations, steps should be taken to provide a uniform rule to govern the regulation of the part time men that will be binding upon both Organizations. It admittedly is practical to make such a rule that is fair to the members of both Organizations and neither Organization can afford to let a lack of control of its local organizations interfere with its enactment.

Zoning of Seniority Districts

One case is before the Board in which the B. of L. F. & E. has sought the abrogation of an agreement signed by the General Chairman of the two Organizations and the Richmond, Fredericksburg & Potomac, whereby the single seniority district on that Railroad is zoned in practical accordance with Rule G-2, of Article III, of the later drafts of the Chicago Joint Agreement. The firemen contend that inasmuch as this Rule affects only men working as firemen, it is their exclusive right to determine what

(Testimony of David B. Robertson.)

the Rule shall be and, in any case, that they have the same right to withdraw from the three-party agreement as they would if the contract were a two-party contract between the Railroad Company and their Organization. No settlement of this case can be had if it is left to an agreement between the Organizations. The probability, however, is that the Company will eventually see the strength of the legal position taken by the Firemen's Organization and the case can then be settled between the Company and the Firemen. It is mentioned here only as indicating the length to which disagreement has come between the Organizations. Doubtless you two gentlemen can agree in this instance on the soundness of the position of the B. of L. F. & E. that it has the sole power to legislate for firemen, but the General Chairman of the Engineers persists in taking the stand that the local Adjustment Committee on the Railroad is the sole arbiter of the policy to be pursued.

Representation

The Board has before it a number of cases, mostly in the Southeast, in which your Organizations are each seeking to gain the right to represent the men in the craft for which the opposing Organization customarily legislates. The question is largely confined to the Southeast where the situation is complicated by the large number of negro firemen who

(Testimony of David B. Robertson.)

#7—Messrs. A. Johnston

D. B. Robertson

who are not admitted to membership in either Organization. Where the rule is in effect that not more than 50% of the employees working as firemen shall be negroes and the negroes are persuaded to vote in favor of the B. of L. E., it only requires the vote of one or two white firemen to swing the election in favor of the B. of L. E. How long the negroes can be persuaded to vote solidly for the B. of L. E. is, of course, problematical, but the mere raising of the question demonstrates the unhealthy condition that has grown in the relations between the two Organizations when the votes of the colored employees are used to determine white representation. From an organization standpoint it would seem more objectionable than anything that has preceded it.

Jurisdictional raids are made in the face of the provision with which almost every engine service contract opens, viz.: That of conceding the right of the B. of L. E. to make and maintain agreements for engineers and a similar right for the B. of L. F. & E. to represent firemen, hostlers and hostler helpers. If the Board fixes an eligible list in these cases to vote the firemen, hostlers and hostler helpers in one class and the B. of L. E. continues its present policy it is likely to take over the contracts on all roads where the negro employees constitute

(Testimony of David B. Robertson.)

a controlling minority. One may well question the long range wisdom of permitting that kind of tactics to be applied, because of the degrading effect in the immediate locale where applied, because of the internal dissension in the B. of L. E. Organization that is inevitable, and because of the ultimate menace to the present set-up of railway labor organization in the impetus that will be given to the general movement toward organization of a vertical union among the colored railway employees.

I have discussed some of these pending cases frankly in order on the one hand, that you may see the importance of settling them and, on the other, that every one may see the futility of continuing the guerilla warfare that appears now to be under way. What one organization gains in one place it loses in another and untold money and time are wasted that might better be devoted to the real affairs of the membership. Railroad managements advise the Board that these jurisdictional disputes are having a very bad effect upon the operation of the railroads. On the other hand, there is evidence that in certain instances managements promote these controversies in an effort to divert the activities of the officers of the Organizations from the customary channels.

(Testimony of David B. Robertson.)

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D. B. Robertson

I regard jurisdictional disputes between standard organizations as being very detrimental to the effective working of the Railway Labor Act as a whole, and the Board is arranging always to give preference to mediation cases that involve the welfare of the workers, leaving the Organizations to adjust their differences for themselves.

I am authorized by the Board to say that if and when your Organizations shall both appoint committees with authority to act, the Board will be glad to devote my time, or that of one of the members of the Board, to mediate between such authoritative committees in an effort to work out an agreement between the two Organizations that will cover their relations in such way as to avoid, as far as practicable, jurisdictional disputes, but nothing can be done in this regard until the B. of L. E. convention shall set up an authority therefor that will bind the local Organizations.

If you regard this letter as of any importance in pointing out to your members the bad effect on your Organizations and on organized labor of continuing the present controversy, or that the letter presents any line of criticism which would be helpful in promoting the making of a new joint agreement adapted to present-day conditions, I have no objection to your use of it in any way you see fit, either by way

(Testimony of David B. Robertson.)

of publication in your Journals or circularizing the membership. I ask only that before using it in any way, you agree between yourselves that it will not be used by one Organization without the consent of the other.

Before closing it may serve a purpose to set out the factors that must be considered in negotiation of a joint working arrangement if matters in disagreement are to be composed. Such a statement may demonstrate the feasibility of making an agreement in the light of present conditions.

Factors to Be Considered in Disposing of Jurisdictional Disputes

The principal factors bearing upon the development of some working arrangement between the Organizations are these:

1. All men in engine service, whether as engineers, firemen, hostlers or hostler helpers, are eligible for membership in both Organizations. There is, therefore, rivalry in both Organizations in a search for a sustaining membership.

2. Each Organization has a nucleus of membership through insurance that has been in effect for many years. In other words, men who have a substantial insurance with the B. of L. E. will remain with that Organization, and conversely, men having a substantial insurance with the B. of L. F. & E. will remain with it.

(Testimony of David B. Robertson.)

#9—Messrs. D. B. Robertson

A. Johnston

3. Competition for membership therefore is open only as to those of the crafts who are not allied to one or the other Organization by insurance ties.

4. The officials of each Organization are selected from the membership which is tied to it by the ties of substantial insurance, with the result that the B. of L. E. Organization is officered by the older men in point of seniority, whereas the B. of L. F. & E. Organization is made up of officers of the next younger group on the seniority roster.

5. The B. of L. E. officials are committed to a policy of retaining large mileage earnings on regularly assigned runs in accordance with seniority without much regard for the younger men who would be furloughed if the mileage limitations provided in the Chicago Agreement were continued as to all regular assignments.

6. The B. of L. F. & E. officers are committed to the principle of limiting the mileage to be earned by individuals in an effort to spread the work, so that the number of men on furlough will be minimized.

7. The divergence of view on mileage limitation is such that it does not appear presently likely that an agreement can be had to limit mileage of all enginemen on a mutually satisfactory basis.

(Testimony of David B. Robertson.)

8. The B. of L. E. & E. assert the right to control the number of men to be assigned to the engineers' extra board by charging to the board emergency mileage earned by others when extra board engineers are not available.

9. The mileage limitation of part time men can be arranged on a mutually satisfactory basis only if within each Organization some central authority is set up to control the action of the committees on all railroads on a standardized basis.

10. Both Organizations are constantly seeking to negotiate rules giving them some measure of control of wages, rules and working conditions for the other craft than that for which they are authorized to legislate.

11. Both Organizations are constantly seeking sufficient authorizations to take over the entire contract for the other craft.

12. In the southeastern region the negro question interjects itself in that the B. of L. E. are soliciting the votes of negro firemen so as to align

#10—Messrs. D. B. Robertson

A. Johnston

them with a small minority of the whites in the craft so as to control the representation of the craft.

13. A provision will be necessary to care for employment and promotion to the engineer assign-

(Testimony of David B. Robertson.)

ments in case an increase of business again occurs.

There are probably other factors that will have to be considered if a serious negotiation is begun. You and your membership are better advised in all these matters than am I but the mere statement of the points of difference between the Organizations is to demonstrate that a new working agreement, based on past experience and present conditions, is practicable and will re-establish peace between the Organizations. The appointment of committees authorized to speak for the memberships in a national way is earnestly recommended.

Very truly yours.

James W. Carmalt

(Signed). JAMES W. CARMALT

JWC:m

[Endorsed]: Filed Oct. 10, 1940.

• Mr. Richberg: May I point out to the Court in this connection, in your consideration of this letter, the National Mediation Board is given definite functions to determine representations. It can take votes, that is, require them to ballot, take secret ballots, and determine who is entitled to represent a craft or class. It is not a body of mere recommendation. It is an administrative body under the law of Congress; hence, at the very least, it has the administration of the law throughout the United

(Testimony of David B. Robertson.)

States, and I think it carries more weight than Mr. Naus indicated. [103] It has certainly a certain force, the exact extent of which, of course, I do not say. The Board might render an opinion and the Court, having the question presented to it, would be entirely free to find the Board wrong.

Mr. Naus: I would rather see a judicial opinion arrived at in the usual way as affording much more light and guidance under the Act.

Mr. Richberg: Q. Prior to this letter of 1936 was there a letter written by Mr. Leiserson, Chairman of this Board, addressed to Mr. Goff, the Vice-President of your Organization, and Mr. Beals, General Superintendent of the Florida East Coast Railroad, on the same subject matter, Mr. Robertson? . . . A. Yes, sir.

Q. You have a copy of that letter also?

A. Yes, sir.

Mr. Richberg: I offer a copy of that letter, dated September 21, 1934, and, I assume, subject to the same objection?

Mr. Naus: I will say, Mr. Richberg, I make the same waiver as I did to the others, as to the genuineness of the letters' signature, the trueness of the copy. I object, however, on the ground it states opinion, conclusion, and hearsay. As to this letter it is also res. inter alios acta.

The Court: Received for identification.

(The document in question was thereupon marked Exhibit "C" for identification.)

(Testimony of David B. Robertson.)

EXHIBIT C

**For Identification
National Mediation Board
Washington**

September 21, 1934.

**Mr. C. J. Goff, Vice President,
Brotherhood of Locomotive Firemen and
Enginemen,
Carling Hotel,
Jacksonville, Florida.**

**Mr. C. L. Beals, General Superintendent,
Florida East Coast Railroad,
St. Augustine, Florida.**

Gentlemen:

Referring to the application of the Brotherhood of Locomotive Firemen and Enginemen for the services of the Board in the dispute with the Florida East Coast Railroad regarding the grievances of six engineers, the Board has given careful consideration to the provisions of the Railway Labor Act, as amended, that are applicable to the question in dispute.

As the Board understands the facts they are:

(1) The case involves grievances of six engineers who have been disciplined or discharged and who desire to discuss their grievances with the General Superintendent.

(2) The men are members of the Brotherhood of Locomotive Firemen and Enginemen.

(Testimony of David B. Robertson.)

(3) They desire to be represented, in conferring with the General Superintendent, by the Vice President of this Brotherhood, who is not an employee of the Florida East Coast Railroad.

(4) The contract covering the engineers is with the Brotherhood of Locomotive Engineers.

(5) The management refuses to confer with the Vice President of the Brotherhood of Locomotive Firemen and Enginemen as the representative of the individuals who have grievances, claiming that in conferences between carriers and employees, up to and including the chief operating officer of the carrier, before an appeal is taken to an Adjustment Board, disputes must be handled according to the "usual manner" of holding conferences for considering individual grievances.

Section 2, Second, of the amended Railway Labor Act provides that:

"All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

— This, it would appear, requires that in conferences between a carrier and its employees regarding any dispute, the employees interested in the dispute may

(Testimony of David B. Robertson.)

designate and authorize any representative they choose so to confer. But the management contends that "in controversies with **INDIVIDUALS** (as distinguished from a whole class of employees) the employee is entitled only to representation such as he was entitled to **IN THE USUAL MANNER** before the amended Act was passed, as provided in Paragraph i of Section Three". And further, that "there is a very clear distinction between the selection by employees of representatives to handle disputes with the management, and the selection of representatives to handle disputes that are referred to a National, Regional or System Adjustment Board".

The management contends that its action in refusing to permit a non-employee of the Company and officer of the Brotherhood of Locomotive Firemen and Enginemen, to represent the aggrieved employees is required by the language of Section 3 (i) of the Railway Labor Act reading as follows:

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach

(Testimony of David B. Robertson.)

an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

It claims that the "usual manner" of dealing with grievances as stated in the law is for the person aggrieved to present his own case or be represented by another employee of the Company and points to paragraphs (a) and (d) of Article 56 of its contract with the Brotherhood of Locomotive Engineers as confirming its interpretation of the Railway Labor Act. These paragraphs provide that:

"(a) An Engineer or an Outside Hostler will not be suspended or discharged without a fair and impartial investigation. At this investigation, which shall be in his presence, he may have present an Engineer or Outside Hostler in good standing, and such witnesses as may have information in the case. The case will not be reopened unless new evidence is submitted in writing within sixty (60) days after he has been notified. If exonerated he will be paid for time lost.

(d) If an Engineer or an Outside Hostler considers himself unjustly disciplined by the Superintendent or is dissatisfied with the decision, he has the right of appeal to the next

(Testimony of David B. Robertson.)

higher officer of the Railway within sixty (60) days of the Date of decision. If he does not make an appeal within that time, the case will be closed and not reconsidered."

This contention of the carrier appears to us not to be in accordance with the usual practice among the railroads generally and not in accordance with the contract provision on which it relies. It seems to be the general practice among railroads to grant an aggrieved employee a hearing, before his Superintendent or immediate superior officer, prior to the taking of disciplinary action; and at such hearing he may have as his representative another employee of the Company in good standing. But when, as here, the case is taken on appeal to the chief operating officer after disciplinary action has been taken, the employee may be and generally is represented by an officer of his union whether or not such officer is an employee of the Company.

The question resolves itself, therefore, down to the problem whether a labor organization to which the engineers belong, but which does not hold the contract covering all the engineers, may, in cases of individual grievances, be designated by the aggrieved employees to represent them in conferences with the management.

The Board finds that it has been a common practice on the railroads generally to handle cases of individual grievances on appeal to higher officials in conferences between such officials and officers of

(Testimony of David B. Robertson.)

labor organizations regardless of whether these were employees of the carriers or not; and that it has been quite common for officers of employees' organizations to represent aggrieved employees in such conferences with higher officials even though these organizations did not happen to hold the contracts covering the class of such employees.

In view of this common practice, the Board is of the opinion that in conferences between carriers and employees to consider grievances of employees who have already been disciplined and have carried their cases to higher operating officials, the "usual manner" of handling such cases has been to permit aggrieved employees to designate representatives for such conferences without regard to whether the representatives were employees of the carrier or not, or whether they were officers of an organization which held a contract or not.

The Board therefore holds that the management is required both by Section 2, Second, and Section 3 (i) of the Railway Labor Act, as amended, to confer with the representative of the Brotherhood of Locomotive Firemen and Enginemen whom the six engineers designated as their representative for handling their grievances.

By order of the NATIONAL MEDIATION BOARD.

WM. M. LEISERSON,

Chairman.

WmL:S

[Endorsed]: Filed Oct. 10, 1940.

(Testimony of David B. Robertson.)

Mr. Richberg: May it please your Honor, I would like to ask Counsel, to save asking the question of the witness, whether there is this understanding in the record at the present time, and that is that the addendum to Rule 43, which is not set forth in your Bill of Complaint, is, as it purports to be, the incorporation of a suggestion made by Dr. Leiserson as the basis [104] for the settlement of a dispute which was involved in the Emergency Board in 1937?

Mr. Naus: That is true.

Mr. Richberg: That is a fact, is it not? I assume Mr. Mason, that is correct?

Mr. Mason: You are correct.

Mr. Richberg: If the Court please, that might save my asking Mr. Robertson three or four questions. I am trying to save time.

Q. Mr. Robertson, are there any railroads where the engineers are not permitted to displace firemen in reductions of engineering service? A. Yes.

Q. Will you mention one such road?

A. Florida East Coast Railroad.

Q. How does it happen that there is such an exception on that road, what peculiar condition?

A. They employ only colored firemen.

Q. Is it a fact that the colored firemen are never permitted to be engineers?

A. That is correct, yes.

Q. Therefore, when there are reductions in the

(Testimony of David B. Robertson.)

force of engineers, the engineers are not allowed to displace firemen?

A. That is correct, yes, sir.

Q. The engineers are simply out of a job?

A. Yes, sir.

Q. When there is an increase in the engineering force, necessary because of a rise in traffic, how does the Railroad get additional engineers?

A. Employ them from other railroads, men who are out of employment.

Q. So in other words, they have no reservoir of firemen that they can constantly draw on to maintain their engine service?

A. No, sir.

Q. During the depression of 1929 and following did you observe [105] conditions on the Florida East Coast?

A. Yes, sir.

Q. Were there a large number of engineers out of service at the time?

Mr. Naus: Objected to as time-consuming on a matter that turns out to be purely collateral. We are not interested in the Negro situation.

Mr. Richberg: If the Court please, it has nothing to do with the Negro situation. I am meeting an issue raised by Mr. Naus, and that is you could entirely eliminate the provisions for the demotion of the Engineers in the contract without injuring them, and I am trying to bring out the effect on the service.

The Court: I will allow the question.

(Testimony of David B. Robertson.)

A. Yes, sir, I did.

Mr. Richberg: Q. Was the result a large number of unemployed engineers? A. Yes, sir.

Q. Where the senior firemen continued their service? A. Yes, sir.

Q. Is it the position of your organization and your contention in this proceeding that the Brotherhood of Locomotive Engineers should be given an exclusive right to contract with the railroads concerning conditions governing the demotion of engineers and displacement of firemen?

A. It is our position they should not be given that right.

Q. Is it your position that should be exercised jointly by the two organizations? A. Yes, sir.

Q. In default of the possibility of agreement between the two organizations, is it your position that that is a matter within the field and jurisdiction of your organization? A. Yes, sir.

Mr. Richberg: May I call the Court's attention at this time to a passage in the Railway Labor Act which I did not read earlier, but which I think is pertinent, and that is the provision which [106] occurs in the first section, Section 151, and in the fifth paragraph of that section. The proviso at the end of the section reads as follows:

"Provided, however, that no occupational classification made by order of the Interstate Commerce Commission shall be construed to

(Testimony of David B. Robertson.)

define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this act or by the orders of the Commission."

I call your Honor's attention to that in connection with the testimony that has just been given as to the position of this organization as to its jurisdiction, which the law specifically provides is not determined by the Act, and I am at a loss therefore to understand how the Court, on the basis of the Act, can determine the jurisdiction of the organization when the Act explicitly provides against that. That is in accordance with the statement of jurisdiction claimed by the organization itself in the premises. I think that is all I have to ask of Mr. Robertson. May I ask your Honor's indulgence?

The Court: There is nothing further at this time?

Mr. Richberg: Nothing further.

The Court: We will adjourn, then, until tomorrow morning at 10:00 o'clock.

(Thereupon an adjournment was taken until tomorrow, Friday, October 11, 1940, at 10:00 o'clock a. m.) [107]

(Testimony of David B. Robertson.)

Thursday, October 11, 1940

10:00 O'clock A. M.

The Court: General Committee of Adjustment against Southern Pacific.

Mr. Richberg: May it please the Court, I would like to ask Mr. Robertson to resume the stand for just a few further questions.

DAVID B. ROBERTSON.

Direct Examination

(Resumed.)

Mr. Richberg: Q. Mr. Robertson, you testified yesterday regarding the usual manner of handling grievances on the railroads, and stated what that was. I want to ask you whether that usual manner of handling grievances is the same to-day as it was before the passage of the Railway Labor Act?

A. Yes, sir.

Q. On how many railroads, Mr. Robertson, does the Brotherhood of Locomotive Firemen and Enginemen hold the contracts governing engineers' service? A. Seventy-five.

Q. Does the Brotherhood of Locomotive Engineers have and exercise the right to represent its engineer members in grievances on such roads?

A. Yes.

Q. Without controversy so far as your organization is concerned? A. Yes, sir.

(Testimony of David B. Robertson.)

Q. Referring to one specific instance, were you asked specifically by the Grand Chief, Johnson, the Chief Executive of the Engineers' Brotherhood, if you took the position that the engineers had that right to represent their engineer members in grievances on the *on the* Florida East Coast Railroad where you hold the contract?

A. Yes, sir, I was.

Q. Does the Brotherhood of Locomotive Engineers exercise the right to handle grievances of firemen who are members of their organ- [108] ization on all roads where your organization, the Brotherhood of Locomotive Firemen and Engineers, hold the contract for firemen?

A. Yes, sir.

Q. On how many railroads does the Brotherhood of Locomotive Engineers hold the firemen's contract?

A. On two, to my knowledge.

Q. Yesterday, Mr. Robertson, Mr. Peterson, a witness for the plaintiff, testified as to the meaning of the word "equivalent", which is used, for example, in Article XLIII of the Firemen's Agreement, which is quoted on page 5 of the complaint. I will read the first condition under Section I, which is as follows:

"First: That no reduction will be made so long as those in assigned or extra passenger service are earning the equivalent of 4000 miles per month; in assigned, pooled, or chain-gang freight, or other service paying freight rates,

(Testimony of David B. Robertson.)

are averaging the equivalent of 3200 miles per month; on the road extra list are averaging the equivalent of 2600 miles per month, or those on the extra list in switching service are averaging 26 days per month."

How is the equivalent of such mileage measured, that is, what does that phrase mean; "earning the equivalent of"?

A. Well, the basic day is founded on 100 miles or less, or eight hours or less in freight service, and if a man works 10 hours, his hours are reduced to miles. If he doesn't make any overtime, it is based on $12\frac{1}{2}$ miles an hour. If he makes overtime, the overtime is reduced to miles on the basis of $18\frac{3}{4}$ miles for each hour overtime. So "equivalent" means the hours made reduced to its equivalent in mileage.

Q Is that straight mileage? A. Pardon?

Q. Mr. Naus asked the question whether you meant straight miles by that. I do not know what his question means. [109]

Mr. Naus: Q. Do you convert the overtime back into freight miles?

A. If overtime is made, the overtime is computed on the basis of $18\frac{3}{4}$ miles per hour.

Q. So that is converted into miles?

A. That is right.

Q. In other words, if a man's work is computed on the basis of miles an hour, the hours are resolved

(Testimony of David B. Robertson.)

into miles to determine the total mileage he has under this maximum?

A. That is right, the hours are made the equivalent of miles. Money has nothing to do with it.

Q. Money has nothing to do with it?

A. No, sir.

Q. The conversion to determine the equivalent is simply a conversion of hours into miles?

A. That is right.

Q. Is that all determined by fixed, established, and accepted conversion terms? A. Yes.

Q. Are those written into the schedules of the contract as a matter of fact?

A. Most of them, yes.

Q. That is, they appear in the back of the schedules? A. Yes, sir.

Q. Where does it appear in the schedule that you have, what page? It is a table, I believe.

A. In the Firemen's Schedule it appears on pages 121 to 124.

Q. Showing the method of converting hours into miles so as to determine what the equivalent is?

A. Yes, sir.

Mr. Richberg: If your Honor please, yesterday you asked one of the witnesses a question—I think it was Mr. Buckley—about a seniority situation, as to which I do not think the answer gave an entirely full picture of the situation. I am going to recall that to Mr. Robertson's attention and ask him to explain that situation.

(Testimony of David B. Robertson.)

Q. Yesterday, Mr. Robertson, the Judge asked whether the situation might exist where the senior fireman, the top fireman, [110] as a matter of fact, had not obtained his promotion and a fireman junior to him might be promoted over him to engineer. It was stated that that condition could obtain. Could that condition obtain more than as a temporary matter? A. No, sir.

Q. What is the requirement on the Southern Pacific Railroad as to a man taking his examinations and becoming eligible for promotion in order to maintain his seniority?

A. All men employed as firemen are required to take the examination for promotion to the position of engineer in their turn according to their seniority on the roster, on the list. If a man is called for promotion and fails, he is given six months' time in which to qualify for his next examination. If he fails the second time, he is reduced to the foot of the roster to the extent he is given one year's seniority and is required then to work up again. In other words, if a man who has been in service ten years was called for promotion and failed the second time, he is put down on the roster in a position where one year's seniority would locate him, and then he starts up again. That is the penalty for failing to qualify. Some roads drop them out of the service entirely.

(Testimony of David B. Robertson.)

In other words, throughout the country to-day the rule is if you hire out as a fireman, it is with the distinct understanding you are going to qualify for promotion.

Q. So, in the first place, if I understand it, Mr. Robertson, firemen are required, as they are called in order, to take examinations demonstrating their ability for promotion? A. Yes, sir.

Q. If they fail, they lose their seniority?

A. That is right.

Q. If they pass, are they then required to take positions as engineers if those positions are open?

A. Yes, sir.

Q. In other words, they are not permitted to retain a satisfactory [111] fireman's position, that is, one set out to them, and not go on the extra list if they are called for service as engineers?

A. No, they are not. They are required to take a promotion.

Q. Is that requirement particularly brought about by the railroad's insistence?

A. Very largely, but agreed to by the men as being a fair basis for promotion.

The Court: Q. There are some men who are satisfactory firemen who have not got either the ability or they do not apply themselves so as to be fit to become engineers? There are a few of those?

A. Very few any more, Judge. They require the man who comes into the service as a fireman to be pretty well qualified. One of the first qualifications

(Testimony of David B. Robertson.)

is, you have got to have a high school education, and the first year you are in service you are given a book to study, and you enter what we call progressive examinations. At the end of the first year you have got to be able to demonstrate you have learned sufficient about the art of combustion to be an efficient, qualified, fireman.

As you go on you get progressive examinations in the machinery, the air brake, break-downs of locomotives, and finally into the train-operating rules.

Q. That makes high class firemen?

A. Yes, they do, but they do not let them stay in the service unless they qualify.

The Court: Proceed.

Mr. Richberg: Q. Referring again to the provisions of Article XLIII of the Firemen's Agreement, which is quoted in the bill of complaint, are such provisions, referring to the engineers' mileage, maximum mileage, demotions, and so forth, found in the contracts between the Brotherhood of Locomotive Firemen and Enginemen and the Railroads on practically every railroad in the country?

A. Yes. [112]

Q. Is there any difference in general between those provisions in the Engineers' Agreement and those provisions in the Firemen's Agreement regarding mileage on the roads in the country?

A. Very little; practically all the same.

Q. And the provisions of the two agreements on the roads are generally identical?

(Testimony of David B. Robertson.)

A. Yes.

Mr. Richberg: We have nothing further to ask, your Honor.

Cross Examination

By Mr. Naus:

Mr. Naus: Q. You say, Mr. Robertson, that provisions like, or substantially like what is found in Article XLIII of the Firemen's Schedule on the Southern Pacific may be found in practically every railroad schedule in the country pertaining to firemen? A. Yes, sir.

Q. It is true, is it not, that such appearance in practically every firemen's schedule throughout the country originated after and out of companion provisions in the Chicago Joint Agreement?

A. In the terms in which they are expressed today, that is true. They were expressed in different terms and varying terms before the Chicago Joint Agreement.

The Court: Q. But to the same effect?

A. In principle, Judge, yes, sir.

Mr. Naus: Q. I hand you, Mr. Robertson, the three documents that are now court exhibits, and will you open them, please, to the '13, the '18 and the '23 revisions and amendments, and hand them to his Honor so he can lay them alongside Article XLIII of the Firemen's Schedule on the Southern Pacific and specify whether XLIII was taken directly from the Chicago Joint Agreement?

(Testimony of David B. Robertson.)

The Court: You had better give them to the Clerk.

Mr. Naus: Q. Will you open them to the place and hand them to me and I will give them to the Clerk? You have handed me here the page that is open at Article XI.

A. That is the one that [113] covers the mileage question, if that is what you want.

Q. I want the one that comes nearest in identity to Article XLIII in the Firemen's Schedule on the Southern Pacific, Pacific Lines.

A. I have Article XLIII. Is that the mileage regulations?

Q. On demotions and lost runs.

A. That is XI; here it is.

Mr. Naus: Would your Honor indulge me by looking at Article XI and laying it alongside of Article XLIII in the Firemen's Schedule, and I will proceed?

The Court: In other words, you want to read XI?

Mr. Naus: Part of XI.

The Court: That is the particular book—

Mr. Naus: It is the same article in all books, but there may have been some amendments on those two amending occasions.

The Witness: In 1918, Judge—that is the one they have in their contract. In 1923 that was put in.

The Court: If you will just not talk, so I can concentrate on this. I can't follow and listen to you. I have read the first one.

Mr. Naus: May I proceed, now?

(Testimony of David B. Robertson.)

The Court: Yes, you may.

Mr. Naus: Q. Mr. Robertson, is it not the fact that it was Article XI in the Joint Agreement, the Chicago Joint Agreement, that for the first time they gave what you have, let us say, generally referred to as the universal right of cut off engineers to go back firing?

A. It affected that question on a number of roads, but we had already established it on some roads before the Chicago Joint Agreement.

Q. But not universally in the broad way that you speak of its appearance in the Firemen's Schedule at this date, isn't that correct?

A. I would say, quite generally. [114]

Q. Is it or not the fact, Mr. Robertson, that as part of the Chicago Joint Agreement, a negotiation between the two brotherhoods, an agreement to which no carrier was a party, that it was growing out of the Chicago Joint Agreement beginning in 1913 that firemen had the correlative right to become promoted to engineers?

A. Oh, no, oh, no. Firemen had a right to be promoted to engineers long before we had the Chicago Joint Agreement—ever since we have had railroads.

Q. Universally? A. Yes, sir.

Q. That is true of all railroads, was it, before the Joint Agreement, that firemen had the right to be promoted to engineers?

A. On every railroad in the United States and Canada, that I know of, except for a period on the

(Testimony of David B. Robertson.)

Florida East Coast Railroad, where they hired no one but Negroes.

Q. Prior to the Chicago Joint Agreement, was it or not a practice on railroads generally for a cut off engineer on one district to go freely to another without resource to any supposed firemen's rights?

A. That was not a practice, no, sir.

Q. Did it occur?

A. If it did, I didn't know about it.

Q. Did you ever hear of it?

A. Not in my day. As long as I have been railroading, firemen's rights to fire on the district for which they were hired has been respected by the Railroad Company and by the agreement under which they were employed.

Q. Do you mean respected as a practice, or respected as a schedule right?

A. Respected as both.

Q. Prior to the Chicago Joint Agreement was it or not the practice for a cut off engineer to go freely from one engineer's seniority district to another without regard to firemen?

A. No, sir, it was not.

Q. Ever at any place?

A. Not that I know of. [115]

Q. You can't think of a single instance of that occurring anywhere in the United States?

A. No, sir.

Q. Either before or since the Chicago Agreement, is that right?

(Testimony of David B. Robertson.)

A. The only example I could give you of that would be this: On divisions where promotion was very rapid, and in the days you are speaking of before the Chicago Joint Agreement, back fifteen or twenty years beyond that, our industry was in an expansive state. It was almost impossible on some railroads to make enough engineers out of the firemen. The industry was expanding, to the extent that they had to seek hired engineers here and there when they did not have enough men to promote who were qualified. In that instance they hired men. That was not so much true in the Eastern District, where we have congestion of railroad mileage and railroad business; but only when it was necessary to hire men because they did not have men to be promoted did they seek to employ engineers or transfer them from one district to another.

For instance, the Texas Pacific Railroad, in the cane rush, when the cane was being harvested, why they sent out to get engineers from everywhere, because it was only about a two-and-a-half-month job. And that used to be true in the ore regions in the summer time. But the industry has settled down now. Technological advances and so forth have stabilized the industry so we haven't that any more. We do not have free interchange of engineers where there are railroad men to be promoted—never had that in my day.

Q. Following your digression for a moment,

(Testimony of David B. Robertson.)

don't you still find that free and easy method on the Florida East Coast, that they have a heavy volume of passenger traffic in the winter time, and engineers come down from the North to run as engineers on the Florida East Coast part of the year—migrate from one road to [116] the other?

A. The reason for that is——

Q. Well, tell me whether they do, or not.

A. They hire all their engineers on the Florida East Coast. Every man who works as an engineer has a seniority date. They are employed because some men in the North would rather work in the South. They do not promote men because they are Negroes. They know they can get a job. The men on that railroad are taken from 33, according to their roster position. They work two and a half months a year and then go back to where they can get a job, or they are out of work entirely. But that is only one railroad in the United States.

Q. Prior to the Chicago Joint Agreement, was it not rather the general practice for railroads to hire up to 50 per cent. of their engineers as distinguished from promoting firemen?

A. No, sir, it was not.

Q. Has there ever been a practice of hiring up to 50 per cent. of engineers, as distinguished from promoting firemen?

A. There may have been on some railroads in the Southwest or West, and that grew out of the fact that it was in those sections of the country

(Testimony of David B. Robertson.)

where they last constructed railroads. Indeed, Mr. Naus, ever since I have been railroading they never hired engineers at all, except when you got the Chicago Joint Agreement in the Southwest during the building of the railroads, men went into the country, like the people who settled it, they left their jobs in the East to go to the West or or West, so as to have jobs when the road opened up. That is how they began to hire engineers, and they didn't have men ready to promote. So, finally, when we got organization there we worked it down to the point where they hired a certain proportion of engineers. But there was no uniform rule on that. [117]

Q. You think it was confined to such instances as, to take a local one, when the Western Pacific was constructed, having neither firemen nor engineers, it hired either as it pleased?

A. They hired men to run the railroad.

Q. Then, after hiring the men and getting a roster of engineers and firemen, they began to take this route or that route?

A. Stabilized the thing, yes.

Q. By the way, going back to your discussion of the word "equivalent" a while ago, as I understand it, generally it is merely a matter of converting hours back to miles so you can reduce the whole thing to miles?

A. That is right.

Q. A man is either running miles or working hours?

A. Yes, sir.

(Testimony of David B. Robertson.)

Q. Suppose he has neither worked hours nor run miles, but puts in a claim for a run around penalty?

A. Usually a man claiming a run around puts in a claim for a day or a half day.

Q. Or 50 miles, or a hundred?

A. Well, 50 miles is a half day.

Q. Explain to his Honor what a "run around" is.

A. A run around, generally speaking, is a claim by a man who stands first on the working list, generally on the extra list, to be called for a run. Instead of calling him they call somebody else, and under the contract he feels he should have been called, and he claims to have been run around, in that instance, and therefore he puts in a claim for a run around. Usually, under the contracts, that is limited to 50 miles or a half day. On the contracts where he gets a day for it he has to go to the foot of the list and work himself up again.

Q. In other words, at the particular terminal he stood first out, but somebody made a mistake, and instead of calling him, somebody else was called, so he put in a run around claim? [118]

A. That is right.

Q. And in some instances a man will get 50 miles and still stand first out, and in other instances he will get 100 miles and stand last out?

A. Yes.

Q. But in either instance he runs no miles and works no hours?

A. That is correct.

(Testimony of David B. Robertson.)

Q. But he puts in a run around claim to the railroad, and the railroad pays him for the run around?

A. Sometimes it does and sometimes it does not. If he proves his claim they do.

Q. A great many of those run around claims are paid consistently, aren't they?

A. Well, there aren't many of them. Railroads are not making mistakes and calling the wrong man every day, but anyway they are paid.

Q. In any event they are paid the equivalent of miles? A. It is adjusted as miles, yes.

Q. So you do take days and convert them into miles?

A. The run around is not based on days; it is based on miles.

Q. But he has not worked a single instant on the railroad, or worked a single minute, so far as paid time is concerned? A. Yes.

Q. He is paid dollars on the basis of miles, isn't that it? All that goes into the equivalent, doesn't it?

A. He is paid dollars for the days he runs on the road, whether it is run around or not, but he does not make a claim or adjust the amount of time he is permitted to work on days; he adjusts it on the amount of miles he makes, and the run around is 50 miles or a half day.

Q. But he has not worked.

A. No. There are lots of times a man does not work but he gets paid for it. It all goes into miles.

(Testimony of David B. Robertson.)

Q. Now, I am turning to page 19. of yesterday's partial transcript, gentlemen. Yesterday Mr. Richberg put this question to [119] you:

"Q. Is it the position of your organization and your contention in this proceeding that the Brotherhood of Locomotive Engineers should be given an exclusive right to contract with the Railroads concerning conditions governing the demotion of engineers and displacement of firemen?"

"A. It is our position that they should not be given that right."

Now, that concludes the quotation, Mr. Robertson. With that in mind, and noticing that the question is in the conjunctive, I would like to break it down, and I will put this to you: Is it the position of your organization and your contention in this proceeding that the Brotherhood of Locomotive Engineers should be given an exclusive right to contract with the Railroads concerning conditions governing the demotion of engineers?

A. It is our position they should not be given that right.

Mr. Richberg: If the Court please, I just read this question over. It happens the answer may be right in a way. The question that I intended to ask Mr. Robertson, and whether I asked it or whether it was my mistake or the Reporter's, was, whether it was the position of the Firemen's Organization

(Testimony of David B. Robertson.)

and their contention that the Brotherhood of Locomotive Firemen should be given an exclusive right to contract concerning the demotion of the engineers, because the next question is: "Is it your position the right should be exercised jointly by the two organizations?" Now, the same thing is true, because it applies to both, but I intended to apply it directly to firemen.

Mr. Naus: I am willing that the transcript should be corrected, but I listened attentively to that question and answer, and I am sure that is the way you asked it. [120]

Mr. Richberg: I may have used the wrong expression. The organizations are very much alike. The result is precisely the same.

Mr. Naus: Q. Now, Mr. Robertson, you say it is the position of the Firemen's Organization, which you head, that under the Railway Labor Act the Brotherhood of Locomotive Engineers do not have the exclusive right with respect to handling provisions as to cutting an engineer off the engineers' working list, is that correct?

A. Well, I have not attempted to interpret the Railway Labor Act, but according to the accepted basis of what is right and what is wrong as between the two organizations, considering the part they play in the industry, we both agreed as a basis of peace between the organizations that neither one of us should control completely and exclusively a situa-

(Testimony of David B. Robertson.)

tion which governs the flow of men up and down between engineers and firemen.

Q. When you say you both agreed, you refer to the Chicago Joint Agreement of 1913?

A. Yes, sir, the basis of which is now in almost all the contracts in the country.

Q. But, Mr. Robertson, you have in mind, have you not that that was terminated in 1927 when the Railway Labor Act was just newly enacted?

A. Well, I remember when the Labor Act was newly enacted, but it didn't have any bearing on the Chicago Joint Agreement.

Q. Let me see if I can clear that up. In the question and answer read to you, the question put to you by Mr. Richberg and answered by you from the stand yesterday, were you basing your answer on the Chicago Joint Agreement provision that you thought ought to be still in effect rather than upon your present ideas of the rights of each organization under the Railway Labor Act?

A. Which answer to do you mean? [121]

Q. I will read the question and answer and leave no doubt about it.

Q. Is it the position of your organization and your contention in this proceeding that the Brotherhood of Locomotive Engineers should be given an exclusive right to contract with the railroads concerning conditions governing the demotion of engineers and displacement of firemen?

(Testimony of David B. Robertson.)

“A. It is our position they should not be given that right.”

A. That is right. I did not base that on the Railway Labor Act, because I felt being in a court, I would not be permitted to interpret the Railway Labor Act. But that is the position both of us have agreed as being a practical, a fair, and an equitable basis of handling this flow of men between the two crafts of engineers and firemen. It is recognized in all the contracts to-day. It was recognized for fourteen years by both of us as being fair, and when the Chicago Joint Agreement was abrogated by the B. of L. E., the two chief executives agreed it was not the thing to do, and that the best thing for the industry would be for us to try to bring them together again, and we met in 1928 with a committee of officers of the B. of L. E., and our Joint Relations Committee, and we again agreed upon a joint agreement, which was almost the same as the one we had in effect for fourteen years. But the General Chairman of the B. of L. E., Mr. Peterson, came in and refused to accept what everyone, the chief executives and other officers, had agreed to. It would have applied to all railroads in the United States and Canada if they could get authority in their organizations to adopt it. Our organization adopted it as a matter of policy. They refused. We have been in turmoil ever since.

(Testimony of David B. Robertson.)

Q. The B. of L. E. in convention and otherwise refused it, did [122] they not?

A. I do not know that they refused it.

Q. You can't produce any agreement that the B. of L. E. has made since the Chicago Joint Agreement was terminated, can you?

A. I can produce one their officers agreed to.

Q. You mean the chief executives, on a tentative basis, but could not get their men in the field to agree to it, isn't that correct?

A. The chief executive and six of his field officers agreed to a basis that was almost identical with the provisions of the Chicago Joint Agreement, and Mr. Johnson said he would have to call his General Chairmen in to see if he could get that adopted so he would not have any difficulty trying to get it put in effect on the railroads, but they refused to have it adopted.

Q. When you speak of Mr. Johnson——

A. The chief executive of the B. of L. E.

Q. He called in his men from the field and they refused to adopt it. Have I now got it clear?

A. Yes, sir.

Q. In that question and answer that I read to you from the transcript, as I understand it, then, you did not base that on the Railway Labor Act; you based it on what you thought would be fair, and you adopted the provisions of the Chicago Joint Agreement as what you thought was a fair basis?

(Testimony of David B. Robertson.)

A. I based it on the position of our Brotherhood. That states the position of our Brotherhood.

Q. Yes, but not under the Act.

A. I didn't try to interpret the Act.

Q. The next question put by Mr. Richberg and answered by you:

"Q. Is it your position that should be exercised jointly by the two organizations?

"A. Yes, sir."

Now, with respect to that question and answer, you did not base that answer on the Act, did you?

A. No, sir.

Q. You based it on what you thought ought to be a contract arrangement [123] ment between the two organizations, didn't you?

A. I based it on what I think is the only way it can be handled successfully and maintain peace in this industry, as a practical matter, and as an organization.

Q. You were expressing it, then, without regard to law or without regard to any existing agreement, but as expressing your thought as the way it ought to be done, is that correct?

A. I expressed it on the way it is being done by almost every railroad in the country to-day, and as the only method shown to be an efficient way of handling it, the only way contributing to efficiency, safety, and economy in the operation of the railroads.

(Testimony of David B. Robertson.)

Q. Didn't I understand you to say yesterday in answer to Mr. Richberg that there is another railroad besides the Southern Pacific in which a controversy like this is in the course of litigation or controversy?

A. No, there is no litigation except on the Southern Pacific.

Q. Any on the Milwaukee?

A. The Milwaukee uses a mileage arrangement.

Q. Any on the Great Northern?

A. None that I know of.

Q. Any controversy there?

A. None that I know of. There might be a controversy, but I don't know of it. There are controversies going on all the time, have been ever since the Chicago Joint Agreement was abrogated.

Q. Then, the next question following the other is this:

“Q. In default of the possibility of agreement between the two organizations, is it your position that that is a matter within the field and jurisdiction of your organization?”

“A. Yes, sir.”

Do you mean by that in the absence of any agreement between the two organizations that you, the Firemen's Organization, should [124] have exclusive jurisdiction over the cutting off of engineers from the engineers working list?

A. I mean by that if we can't reach a joint understanding between the two organizations and

(Testimony of David B. Robertson.)

the management that will control this flow of men back to take firemen's jobs, and any organization is entitled to have exclusive jurisdiction over that, it ought to be the firemen, because they are the men whose jobs are being taken. But I do not claim that that is the proper way to do it. It ought to be done jointly.

Q. I merely want to have the record clear as to what your answers mean, because they were a little confusing yesterday. As I understand, then, you think there ought to be a joint agreement between the two organizations, the Engineers and the Firemen, but so long as there is not one, the Firemen should have the exclusive say on the subject, is that correct?

A. No, it does not necessarily follow there has to be any agreement between the two organizations on that point in order to have an agreement on that point between the management and the organizations on the railroads. The officers of these organizations may be charged with keeping the organizations apart as a basis of a national policy. That does not prevent the men from entering into an agreement with the management identically the same as we had in the Chicago Joint Agreement, and it is the only peaceful way it can be accomplished, in my opinion.

Q. You mean a joint schedule on the particular property, or identical schedules, the identical provisions?

A. Either way.

(Testimony of David B. Robertson.)

Q. In the first place, either before, during, or since the Chicago Joint Agreement has there ever been a joint schedule on the Southern Pacific?

A. That I couldn't answer.

Mr. Naus: I think it will be agreed, Mr. Mason, there never [125] was, isn't that the fact?

Mr. Richberg: There never was.

Mr. Mason: Yes, I understand there has never been any joint schedule on the Southern Pacific, Pacific Lines, the ones involved in this case. I believe there is a joint schedule on the El Paso & Southwestern Lines.

Mr. Naus: As to the property in litigation, here, there was never a joint schedule. That is a stipulation, isn't it?

Mr. Mason: I think that is correct.

Mr. Naus: Q. Now, Mr. Robertson, leaving joint schedules out of consideration, joint schedules at any time, and assuming a situation where there are separate schedules, one the Fireman's Schedule, and the other the Engineers' Schedule, and assuming each contains provisions such as Article XLIII in the Firemen's, here, and suppose the two committees, the two General Committees, or the two General Chairmen disagreed in the interpretation of the identical language. How far does your position take you as to who is to have the final say as between the Engineers and the Firemen in interpreting that?

(Testimony of David B. Robertson.)

A. If it is a rule arising under the Engineers' contract and there is a difference of opinion as to what it means, we accept the B. of L. E. Chairman's interpretation; and, conversely, they accept ours if there is a difference of opinion as to what our rule means.

Q. I know, but taking the provisions that relate to part time men, you have identical language in the two schedules concerning it?

A. It is in each schedule, and the Firemen's General Chairman and the Engineers' General Chairman disagree between themselves as to the proper interpretation of the same language as between the two.

Q. Who do you say should have the final word?

A. Well, the people that adopted the part-time mileage regulation [126] that you refer to certainly ought to know what they meant when they adopted it, and it seems to me they are the people who ought to say what it meant. The part-time question that you are discussing, if I follow you correctly, is the one we discussed in the National Mediation Board offices, and which the principal officers of the two organizations accepted.

Q. Assuming a situation where it was never interpreted by those gentlemen whom you mentioned, but of whom I am ignorant, assuming some question of interpretation arises under the schedules and nobody can find an interpretation precedent, and

(Testimony of David B. Robertson.)

under such circumstances the General Chairman of the Engineers and the General Chairman of the Firemen disagree, what is your position as to which one should have the last say on it?

A. I can't change my position on the proposition that the Brotherhood of Locomotive Engineers in a controversy on a rule in their contract have a right to interpret it; conversely, we have the right to interpret our rules if there is any controversy. Rules are so nearly alike, so many have been exactly alike for forty years, everybody on the railroad knows what they mean, and there isn't one time in a thousand that there is any controversy about the thing.

Q. I am afraid even though you may be right, there are lots who will not agree with you. Now, Mr. Robertson, assume a case where there is identical language and the Firemen's Organization was handling an engineer's claim under the Engineers' schedule. How do you go about getting the interpretation of that?

A. Well, as far as the principle of having the case is concerned, I can only answer—I do not know what individual it is on the several hundred railroads in the country—but if that was in the lodge to which I belonged, and I was running engine, and I had a run around claim, I would file it with the management, and [127] if they turned it down or refused to allow it, I would take it to my local lodge, file it with the local committee, and if they

(Testimony of David B. Robertson.)

concluded it was meritorious, they would refer it to the local chairman. He would take it up with the local official, and nine times out of ten it would be adjusted, and that is all there would be to it.

Q. Suppose we assume it was not adjusted and there was a controversy all the way through on the schedule. Then what happens?

A. There isn't any controversy over the interpretation of the schedule. It is just a question whether the man is entitled or whether he is not. We do not raise any question of interpretation.

Q. In other words, it is your position, then, Mr. Robertson, any time the Firemen's Organization handles a claim for someone under the Engineers' Schedule, there is never a question of interpretation of the Engineers' Schedule involved, is that correct?

A. No, sir, that is not correct.

Q. Well, is there ever a question of interpretation?

A. It might be. If there was, we would accept the B. of L. E. Chairman's interpretation.

Q. How about a situation where the Firemen claimed there was no question of interpretation involved, but the Engineers' Chairman stated you were interpreting it wrongly, it should be interpreted in a different way.

A. Well, I do not know how the Engineers' Chairman would know anything about the case if there wasn't any controversy about it. We do not

(Testimony of David B. Robertson.)

notify the Chairman of the B. of L. E. when we have cases.

Q. Assume a case that is known: The Firemen are making a claim under the Engineers' Schedule, and their Chairman makes one interpretation, but the Engineers state the Firemen's interpretation [128] is wrong, that the interpretation should be otherwise. Then what?

A. If we come to a point where there is a difference as to what the contract meant, we would accept the B. of L. E. interpretation of the rules and they would accept ours. That is the principle we follow.

Q. Now, I think you said that the Firemen hold the engineers' contract on about seventy-five railroads in the United States?

A. Seventy-three in the United States and two in Canada.

Q. Let us take the seventy-three in the United States. How many of them are Class 1 railroads?

A. Seven.

Q. Seven class 1 railroads and sixty-six smaller railroads in the United States, making seventy-three?

A. Thirty-four switching and terminal companies.

Q. What is that?

A. There are thirty-four switching and terminal companies, and there are twenty-four Class 2 rail-

(Testimony of David B. Robertson.)

roads. The rest of them are broken up between Class 3, and there are three railroads that do not report to the Interstate Commerce Commission. They are lumber companies with possibly two or three dozen men on them, and they come under the National Labor Relations Act.

Q. State for the benefit of his Honor what a Class 1 railroad is. State the various classes of railroad so we will know what we are talking about when we talk of a Class 1.

A. A Class 1 railroad is a railroad—and I do not like to quote the definition, but the Interstate Commerce Commission have set up what constitutes these classifications—Class 1 is a railroad whose gross earnings are more than a million dollars a year, Class 2's are below that, switch and terminal companies are in a class by themselves, regardless of what their earnings are.

Q. Now, Mr. Robertson, with permission of counsel, I draw attention to the last report of the National Mediation Board, including [129] the report of the National Adjustment Board—this is under the Railway Labor Act—it is the Fifth Annual Report. I invite attention to page 18, which contains Table 10. I draw your attention to the statistical data there showing the Brotherhood of Locomotive Engineers hold the Engineers' contract on 229,275 miles in the United States, and that the Brotherhood of Locomotive Firemen and Enginemen hold the Engineers' contract on 1761 miles

(Testimony of David B. Robertson.)

in the United States. Would you say that is approximately right?

A. Well, I would not want to say that that represents the miles that we hold a contract on. That would depend on how many contracts were filed with the Mediation Board.

Q. They are all required to be filed?

A. Yes, but switch and terminal companies are not measured in miles, and neither are the miscellaneous roads, as far as the contracts we file with the National Mediation Board are concerned. Of course, it represents the mileage of the roads that have mileage, but it does not represent the switch and terminal companies, and there may be more men employed on them than there are on the roads that have this mileage.

Q. Of the seventy-three railroads that you spoke of in the United States that you hold the Engineers' contract on, you say there are two Class 1 roads?

A. Seven Class 1.

Q. Name them.

A. I don't know as I can right now, but I would be glad to give them to you to-day sometime.

Q. I wouldn't want to hold them secret from his Honor.

A. I will give you the whole list of seventy-five. I can do it at noon.

Q. Will you prepare a list of those?

A. I have them prepared, but I haven't got them with me. It is possible someone here may have it.

(Testimony of David B. Robertson.)

Mr. Richberg: I think, your Honor, we have a list of those roads, if you will indulge us.

Mr. Naus: If Counsel are agreeable—I leave it to them to say whether they are or not—may we not stipulate that the rules of judicial notice may be enlarged so that this Court may notice this report, and any other court may notice it without including it in the record?

Mr. Richberg: I assume it has the same value as the letters which were introduced in evidence.

Mr. Naus: I withdraw the suggestion. I merely had this opportunity to present that statistical data, but I do not want it used as an instrument to hang irrelevant or incompetent matter upon.

Mr. Richberg: If you wish the witness to answer the question that you just asked him, for the purpose of refreshing his recollection I can furnish a list of the roads, if he can tell from them which is Class 1 roads.

Mr. Naus: I ask that this be marked for identification.

The Court: D.

(The document in question was thereupon marked "Exhibit D for identification.")

(Testimony of David B. Robertson.)

EXHIBIT D

For Identification

List Showing Railroads
on which

The Brotherhood of Locomotive Firemen
and Enginemen

Represents and has jurisdiction over
Locomotive Engineers or Motormen.

District No. 1—Western

- 1—Alameda Belt Line
- 2—Alton & Southern
- 3—Arkansas & Louisiana Missouri
- 4—Ashley, Drew & Northern
- 5—California Western R. R. & Navigation
- 6—Chicago, W. Pullman & So.
- 7—Chicago & Western Indiana
- 8—Chicago South Shore & South Bend
- 9—Crossett Lumber Company
- 10—Colorado & Wyoming
- 11—Davenport, Rock Island & N. W.
- 12—East St. Louis Junction
- 13—Fort Worth Belt
- 14—Galveston Wharf
- 15—Illinois Terminal (Steam Division)
- 16—Lake Superior Terminal & Transfer
- 17—Manufacturers' Ry. (St. Louis)
- 18—Minneapolis, Northfield & So. (Minnesota Western Ry.)

(Testimony of David B. Robertson.)

- 19—Minnesota Transfer
- 20—Missouri-Arkansas
- 21—Missouri-Illinois
- 22—Mt. Hood
- 23—Outer Harbor Terminal
- 24—Pacific Coast (Washington)
- 25—Paris & Mt. Pleasant
- 26—Pickering Lumber Corporation
- 27—Port Terminal R. R. Association
- 28—Pullman
- 29—Quanah, Acme & Pacific
- 30—Sierra
- 31—Texas City Terminal
- 32—Trona
- 33—Union Ry. of Memphis
- 34—Union Terminal (Dallas)
- 35—Union Terminal (St. Joseph)
- 36—Verde Tunnel & Smelter Co.
- 37—Waco, Beaumont, Trinity & Sabine
- 38—Weyerhaeuser Timber Company
- 39—West Side Lumber Company

District No. 2—Eastern

- 1—Akron & Barberton Belt
- 2—Algers, Winslow & Western
- 3—Aliquippa & Southern
- 4—Benwood & Wheeling Connecting
- 5—Berlin Mills
- 6—Buffalo Creek

(Testimony of David B. Robertson.)

- 7—Canton
- 8—Chicago, Attica & Southern
- 9—Lakeside & Marblehead
- 10—Lake Terminal
- 11—Lehigh & New England
- 12—Manistee & No. Eastern
- 13—Maryland & Pennsylvania
- 14—Monongahela Connecting
- 15—Montour
- 16—McKeesport Connecting
- 17—Newburgh & South Shore
- 18—Pittsburgh, Allegheny & McKees Rocks
- 19—Pittsburgh, Lisbon & Western
- 20—Port Huron & Detroit
- 21—Union Freight
- 22—Washington Terminal

District No. 3—Southern

- 1—Atlanta, Birmingham & Coast
- 2—Atlanta & St. Andrews Bay
- 3—Broward County Port Authority
- 4—Florida East Coast
- 5—Frankfort & Cincinnati
- 6—Interstate
- 7—Meridian & Bigbee River
- 8—New Orleans Lower Coast
- 9—Port Utilities Commission
- 10—Sloss Sheffield (Mary Lee R. R.)

(Testimony of David B. Robertson.)

11—Tennessee Coal & Iron

12—Terminal Ry.—Alabama State Docks

District No. 4—Canada

1—New Foundland Government Ry.

2—Algoma Steel

Total.....75.

Mr. Naus: Now, using Exhibit D for identification, can you from that name me the Class 1 roads that you spoke of?

A. I don't think I can, Mr. Naus, but I have them classified by classes at the hotel.

Q. Then we will pass it for the moment.

A. For instance, I start out—the Florida East Coast—I can see in a minute that is a class 1 road. The Chicago & Western Indiana is a Class 1. The Missouri-Illinois is a Class 1. I can name some of them but I can't name all. I will be glad to mark them for [131] you and give them to you.

Q. All right. Referring again to this Fifth Annual Report for the Fiscal Year ended June 30, 1939, you will notice here it is stated that the Brotherhood of Firemen and Enginemen hold the Engineers' contract on only four carriers in the United States. Do you mean to say that there are a large number of these seventy-three Engineers' contracts that you hold that you have not filed with the Board?

(Testimony of David B. Robertson.)

A. I couldn't say. I don't know where they got their information, but I do know we hold seventy-five contracts for Engineers. I can file those contracts with you if you wish.

Mr. Naus: That is all.

Mr. Richberg: We have no redirect.

The Court: That is all, except I presume you are asking him to return to give that data that you requested?

Mr. Naus: Well, rather than interrupt the trial, I withdraw the suggestion on that.

The Court: You waive that request?

Mr. Naus: Yes, I will waive that.

Mr. Richberg: May it please the Court, I would like to state to counsel that if counsel wants to use subsequently information as to these Class 1 roads, and so forth, we are entirely willing to have the information used, official statistical data.

The Court: He withdrew the request. I do not know whether he wants it.

Mr. Naus: If you can supply it conveniently during the noon hour, then we will reach a determination on that.

Mr. Richberg: If it please your Honor, so far as the intervener is concerned, we rest.

Mr. Mason: We have already rested, [132]

Mr. Naus: Call Mr. Laughlin.

GEORGE W. LAUGHLIN,

Called as a witness by the Plaintiff, being first duly sworn by the Clerk of the Court, testified as follows:

Direct Examination

Mr. Naus: Q. Mr. Laughlin, you are connected with the Brotherhood of Locomotive Engineers, are you? . . . A. Yes, sir.

Q. In what capacity?

A. First Assistant Grand Chief.

Q. How long have you been with them in that capacity?

A. Since January 1, 1935, that is, in the present position.

Q. Now, you have been a fireman, have you?

A. Well, I fired about thirty days.

Q. When? . . . A. 1898.

Q. Have you been an engineer?

A. Yes, sir.

Q. Beginning when?

A. Ran an engine in active service during 1898 to 1920.

Q. You still hold seniority as engineer on some railroads, do you? . . . A. Yes, sir.

Q. Which? . . . A. Atlantic Coast Line.

Q. In 1920 when you stopped running engine, what did your activity become from then on, from 1920 to date?

A. General Chairman for the Engineers on the Atlantic Coast Line Railroad.

(Testimony of George W. Laughlin.)

Q. From 1920 to when?

A. Well, June, 1924.

Q. Then what happened?

A. I was elected Assistant Grand Chief Engineer at the Convention of 1924.

Q. By the way, the Engineers have a number of Assistant Grand Chiefs, have they not?

A. Nine in number.

Q. There is the Grand Chief, and then there is the First Assistant, who is now yourself, and then nine others who are assistants, is [133] that correct?

A. Yes, that is correct.

Q. By the way, the Florida East Coast Railroad has been mentioned here. Have you ever worked on that?

A. No, sir, I never ran an engine on that line.

Q. Have you ever had any contact or connection with that Brotherhood?

A. Yes, sir.

Q. Now, you are familiar with the Chicago Joint Agreement in a general way, are you not?

A. Yes, sir.

Q. You were an engineer when it was adopted?

A. Yes, sir.

Q. And you have been one through the successive revisions or amendments of it?

A. Yes, sir.

Q. And you are familiar with the history of the termination of it in 1927, are you not?

A. Yes, sir.

Q. Prior to the Chicago Joint Agreement, Mr. Laughlin, was it a universal practice or rule or

(Testimony of George W. Laughlin.)

schedule rule on railroads throughout the United States for engineers to have the right to go back firing and go off the engineers' working list?

A. So far as my knowledge goes, yes, sir. Engineers were entitled or privileged to return to whatever position they were promoted from to engineers.

Q. But take a situation where there was an engineer cut off the list who had not been promoted, but who had been hired?

A. Until September 4, 1918 hired engineers did not acquire seniority as firemen on any road that I have knowledge of.

Q. And you have been on many railroad properties throughout the United States in your organization capacity, have you not?

A. Quite a number, yes.

Q. All over the United States?

A. All over the United States.

Q. Over a period of years? A. Yes, sir.

Q. And you have taken up schedule questions, controversies, with [134] many railroad executives on many railroads throughout the United States all over, over a period of years?

A. Yes, sir.

Q. You have studied, examined, and argued upon these railroad schedules with railroad executives, have you not? A. In a general way.

Q. Prior to the Chicago Joint Agreement was it a universal practice for firemen to be promoted to

(Testimony of George W. Laughlin.)

engineers, or for railroads to hire engineers, or what was the practice?

A. Well, in the territory where I am better acquainted they hired a great many engineers, or, in fact, the majority of engineers.

Q. Hired, rather than promoted?

A. Yes, but that was because of having colored firemen on some of the Southern roads.

Q. By the way, in your work on the railroad in which you hold seniority, that was located in what part of the country, your particular work?

A. That runs through Virginia, North and South Carolina, and Georgia, Florida and Alabama.

Q. What was the situation up to 1917, say, as to what the practice was with respect to what percentage of engineers railroads could hire as distinguished from the promotion of firemen?

A. Well, I do not know of any designated percentage of engineers that could be hired, nor were there any agreements as to the percentage of men that would be promoted.

Q. You mean no schedule provision on it?

A. Not so far as I know.

Q. Was it not the practice for railroads to hire up to 50 per cent. as distinguished from promoting firemen prior to 1917?

A. That is on some railroads. I couldn't testify to that of my own knowledge.

Q. Is it or not the fact that there was never a

(Testimony of George W. Laughlin.)

universal practice, that the practice varied very much throughout different sections of the country?

A. That is my understanding. [135]

Q. There was no such thing as universal practice in the industry, at all, was there?

A. I have no knowledge of universal practice on that question.

Mr. Naus: You may cross-examine.

Mr. Richberg: May it please the Court, Mr. Mason questions whether he will have any questions to ask on cross-examination. Might I ask that we undertake a cross-examination, and if Mr. Mason has any questions to ask subsequently, he might do so?

The Court: Proceed.

Cross Examination

By Mr. Richberg

Mr. Richberg: Q. Mr. Laughlin, referring to the practice prior to the Chicago Joint Agreement, wasn't it a fact that on many roads the engineers did not have the privilege of being demoted and taking firemen's positions when there was a lack of work as engineers?

A. I don't know of any railroad of my own knowledge, Mr. Richberg, where an engineer promoted from the ranks of firemen were not permitted to return to the ranks of firemen when he no longer was needed by the management as an engineer.

(Testimony of George W. Laughlin.)

Q. That, however, was not always under the same conditions, was it, Mr. Laughlin, on all railroads? I mean he might not necessarily be promoted to take the senior fireman's place?

A. My knowledge is he was entitled to go back in the same relative standing that he enjoyed prior to this promotion.

Q. That is, as a general practice, you mean?

A. Yes, sir.

Q. Now, may it not be true that on many roads to which your knowledge does not extend there may have been variations in that practice?

A. Well, I couldn't testify where my knowledge does not extend.

Q. What I was endeavoring to bring out is, your knowledge was not universal as to conditions on all railroads prior to the Chicago [136] Joint Agreement?

A. Well, generally, my knowledge—I have some knowledge of the general situation.

Q. When you spoke of their being permitted to return when they came up from the ranks of the firemen, you were distinguishing the case of the hired engineer? A. That is right.

Q. That is, the hired engineer was not included in the class of those who would be permitted to take a fireman's job?

A. As far as my knowledge goes, a hired engineer did not hold any rights as a fireman prior to September 4, 1918. Therefore, he could not return

(Testimony of George W. Laughlin.)

to a fireman's position unless the company would grant him that right as the youngest fireman on that seniority district.

Q. In 1918 an agreement was made, was it not, giving to hired engineers a seniority date?

A. Yes.

Q. What was that agreement?

A. An agreement was reached whereby hired or employed engineers would have a date of fireman the same as that of engineer.

Q. And that was an agreement reached between the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen?

A. Yes.

Q. And then as a result that was written into various contracts?

A. That was not adopted by all railroads. It was by some.

Q. Mr. Laughlin, the complaint which has been filed in this case charges that certain provisions of the Firemen's Contract with the Southern Pacific, in the language of the complaint, "Governing and affecting said craft of engineers in their service as locomotive engineers, including the following," the first of which is Article LI of the Firemen's Agreement. If you will turn to Article LI of the Firemen's Agreement, as to which the charge is made that that is in violation of the rights of the engineer and [137] in violation of the Railway Labor Act as

(Testimony of George W. Laughlin.)

governing and affecting the craft of engineers, I would like to read that to have it clearly before us:

“The right of any engineer, fireman, hostler or hostler helper to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded.”

Will you state what part of the provision that I have read affects the engineers' craft, and how?

A: Well, in the first place, I do not know by what authority the Firemen's Organization presumes to grant to the Engineers the right that is referred to in the first line, the right of any engineer to have his regularly constituted committee. I do not understand how the Firemen's Organization can grant to the Engineers the right to represent their own men.

Q. Now, may I ask, recognizing the fact, Mr. Laughlin, that many engineers or members of the Firemen's Organization do contend that the Firemen's Organization can't contract with the railroad, that they will represent members of their own organization who happen to be engineers?

A. I contend, Mr. Richberg, that the organization that is designated by that particular craft is the only authority to represent members of that craft.

(Testimony of George W. Laughlin.)

men who are working in that craft, on any matters that are covered by schedule provisions.

Q. Do you mean that any claim which is filed in behalf of an engineer, which goes back to the provisions of the Engineers' Contract, that in such a matter the engineer cannot be represented by any organization except the Brotherhood of Locomotive En- [138] gineers?

A. My understanding of the Railway Labor Act gives to the craft the exclusive right of representation. I am not speaking as an attorney; that is a layman's interpretation.

Q. I am asking for your contention. Let us get this perfectly clear, then: Does this mean, then, that in any grievance dispute with the railroad an engineer who is a member of the Firemen's Organization under your contention cannot be represented by the Firemen's Organization but must be represented by the Engineers' Organization?

A. So far as any schedule rule that was negotiated by the Engineers' representatives with the management, yes.

Q. That is, if such an engineer has a claim for a certain amount of money, for certain allowance in mileage, or whatever the claim may be, which he claims is due him, in accordance with the contract, the schedule agreement, do you mean under those circumstances it is your position he cannot be represented by the Firemen's Organization, of which he

(Testimony of George W. Laughlin.)

is a member, but must accept the representation, if any at all, by the Engineers' Organization?

A. If it becomes a dispute as to the right of the claim, yes. I think he must be represented by the Engineers' representative.

Q. Well, if the claim is not allowed, then it is a dispute; that is what you mean?

A. That is what I mean.

Q. You mean I might make a claim, but if the railroad disputes it, it immediately becomes a matter that must be handled by the Engineers?

A. Yes.

Q. That makes clear, then, your objection to Article LI, and I would like to state it so I won't misstate you. It is simply this: That no member of the Firemen's Organization has a right to be represented in a grievance by his own organization if the grievance involves a claim made under the Engineers' Contract [139] with the railroad.

Mr. Naus: The witness has not claimed—

The Court: He has not answered yet.

Mr. Richberg: Q. Will you say "Yes" or "No"?

A. I didn't answer at all.

The Court: You nodded your head.

The Witness: I answered that question by stating my interpretation or understanding of the Railway Labor Act precluded the Firemen's representative from representing under such circumstances.

Mr. Richberg: Q. Since you insist on referring to the Railway Labor Act—I have no objection to

(Testimony of George W. Laughlin.)

your referring to it—I will ask you if you will refer to one provision in the Railway Labor Act which is found in Section 2, Paragraph IV, and the sentence which reads as follows:

“The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act.”

Are you referring to that?

A. That is one part of it.

Q. Is there any other place in the Railway Labor Act where you think such right is created?

A. I have searched the Railway Labor Act trying to find something in there that would give to other than the designated representative, and I have been unable to do so.

The Court: Q. You mean you were unable to find it?

A. Yes, I have been unable to find any provision in the Railway Labor Act that would extend to some outsider the right to represent men under the contract made by the legally designated representatives.

Mr. Richberg: Q. May I call your attention to Section 3 of the Railway Labor Act, Paragraph First, and Clause I, which refers [140] to disputes heard by the National Board of Adjustment, in which appears the following language:

(Testimony of George W. Laughlin.)

"Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect."—

that is before the Board.

A. My understanding is an individual can take a case to the Board under the law, or he can select anyone he desires to take it to the Board. I had reference in my answer, if you please, to handling the claim with the railroad official whom the agreement was made with.

Q. You would concede that if a fireman, a member of the Firemen's Organization, who is an engineer, were prosecuting a claim arising under the Engineers' Schedule before the National Adjustment Board, that he could be represented in that by a member of the Firemen's Organization?

A. My understanding of the law is that it extends that privilege.

Q. In other words, it is your claim that during all the lower stages of the controversy he must be represented by the Engineers' Organization, but when he reaches the final Board of Adjustment, he may be represented by the Firemen's Organization?

A. I stated my understanding of the law was he was privileged under the law to take cases to the National Board. I have been unable to find anything in the Railway Labor Act that would give him the right to handle it with the makers of the agreement.

Q. Now, I would like to direct your attention to

(Testimony of George W. Laughlin.)

Article XLIII, which is set forth in the complaint on page 5, and it is charged that it is a violation of the right of engineers and the Railway Labor Act for the Firemen to make the agreement with the railroad, which reads as follows:

“Section 1. When, from any cause, it becomes necessary to [141] reduce the number of engineers on the Engineers' Working List on any seniority district, those taken off may, if they so elect, displace any firemen their junior on that seniority district, under the following conditions:”

Without going any further, will you state whether there is anything in that section which you regard as in violation of the rights of the engineers under the Railway Labor Act?

Mr. Naus: Tell him he may look at the schedule.

Mr. Richberg: He has the schedule.

A. I think the question of men returning to the position of firemen when reduced from the working list of engineers, is one that addresses itself to the Firemen's Organization.

Q. So that you would have no complaint of the contract so far as I have read it? A. No.

Q. Now, the first condition which appears under that reads as follows:

“First: That no reduction will be made so long as those in assigned or extra passenger service are earning the equivalent of 4000 miles.

(Testimony of George W. Laughlin.)

per month; in assigned, pooled or chain-gang freight, or other service paying freight rates are averaging the equivalent of 3200 miles per month; on the road extra list are averaging the equivalent of 2600 miles per month, or those on the extra list in switching service are averaging 26 days per month."

That is set up as one of the conditions under which an engineer may be demoted and displace a fireman. Is there anything in that agreement or provision which you regard as in violation of the rights of the engineers or the Railway Labor Act?

A. I do not think any part of that has a place in the Firemen's Agreement, because the matter of regulating conditions of the engineers is one that would be handled by the Locomotive Engineers [142] exclusively.

• Q. You take the position that the Firemen's Organization cannot establish those conditions upon which they are willing to have men demoted and take away their jobs?

A. My position is that the Firemen's Organization has a right to say whether men will go back to firing or not. But I do not think they have a right to say how much mileage an engineer will make.

Q. Then, under your contention, Mr. Laughlin, you would concede that the Firemen could make this condition, but they could not require the railroad to enforce it against the Engineers?

(Testimony of George W. Laughlin.)

A. The Firemen, in my opinion, can make an agreement with the company provided the company will do so, prohibiting engineers from going back to firing at all when they are cut off, Mr. Richberg.

Q. Don't you think the Firemen can make an agreement with the company stating the conditions under which they are willing to have, that is, if engineers run, in their judgment, excessive mileage and so throw back an unusual number of men, that under those circumstances they are willing to have them demoted? Do you think the engineers and firemen can't make such an agreement with the railroad?

A. I do not think the company has any right to make a rule, make an agreement with the Firemen where it pertains to the regulation of engineers.

Q. In other words, the Firemen, as a matter of fact, can't make, according to your opinion, any condition on the demotion of the engineers except they can provide with the railroad that when engineers are out of work, they can be demoted or they can't be, is that your position?

A. My idea is, Mr. Richberg, the Engineers' Committee or Organization is the ones to decide when engineers will be removed from their working list. The Firemen's [143] Organization is the one to agree with the company when they will go back to firing, if and when they go back to firing.

Q. Now, as a practical railroad man of long experience, Mr. Laughlin, you know as a matter of

(Testimony of George W. Laughlin.)

fact, do you not, that one of the most important considerations moving firemen to permit their senior firemen to be displaced is that engineers shall not run what they regard as excessive mileage and so throw back an unnecessary number of engineers on the Firemen's list? You know that is a matter of great interest to firemen, don't you?

A. That is a matter of interest to the Locomotive Engineers' Organization as to how much mileage an engineer will be permitted to make.

Q. Don't you think it is a matter of very great interest to the Firemen as to whether they shall have a large number of men thrown back, displacing firemen, when, as a matter of fact, if the engineers were running a reasonable amount they would have fewer men displaced? That is a matter of interest to the Firemen, isn't it?

A. Regardless of my thought in the matter, I am making a statement here as to the rights, in my opinion, of one organization to make rules to govern the craft of another organization.

Q. Then you do not agree, Mr. Laughlin, with the statement which I understood counsel for the plaintiff made here, following my original statement in this case, to the effect that it was within the rights of the Firemen's Organization to set up by contract the conditions under which they would permit demoted engineers to displace firemen?

A. I was trying to answer your questions, Mr.

(Testimony of George W. Laughlin.)

Richberg, without regard to statements made by others.

Mr. Richberg: I think that is all.

The Court: Q. Do I understand, then, your attitude is this: [144] Just as soon as an engineer is demoted or is allowed to take a position of fireman, he is to be treated as a fireman?

A. No, sir. I do not mean that. I mean that is a right that the Committees representing the Firemen and the Railroad Management have without any question coming from any other organization.

Q. In other words, if he wants to make any claim, a man who has been demoted, he must make it to the Firemen's organization because he was acting as a fireman?

A. Yes, sir.

Q. That is your thought?

A. That is my thought.

Cross Examination

By Mr. Mason:

Mr. Mason: Q. Mr. Laughlin, bearing further on some of the questions asked you by Mr. Richberg, there are a number of men, members of your organization, who from time to time go back firing, do they not?

A. A good many—you mean members of the Brotherhood of Locomotive Engineers?

Q. Yes.

A. Yes, they go back to firing in accordance with their seniority as firemen.

(Testimony of George W. Laughlin.)

Q. They go back under the provisions of rules similar to Article XLIII of the Firemen's Agreement on the Southern Pacific and Article XXXII, Section 6, of the Engineers' Agreement on the Southern Pacific. Now, when a fireman member, when a member of your organization, B. of L. E., serves as a fireman, there may accrue grievances for run arounds, or some other right arising, as to which you will make a claim against the company, may he not? A. That can happen, yes.

Q. He may be even subjected to discipline?

A. As a fireman?

Q. As a fireman. A. Yes.

Q. There will have to be some handling of the claim with the management, will there not?

A. Yes.

Q. And if the case is one involving discipline, for example, it [145] may involve an interpretation of the investigation rule, may it not? A. Yes.

Q. In that case who handles the claim with the management?

A. I think the Firemen's representative should handle it.

Q. Would you say then that the fireman member of your organization should present his claim through the Local Chairman of the Firemen?

A. I think if the B. of L. E. man is back firing he should come under all provisions of the Firemen's Contract and be represented by that organization.

(Testimony of George W. Laughlin.)

Q. Would you give Mr. Peterson, the General Chairman, the right to represent your fireman member if the claim, for example, was that the investigation rule had not been complied with?

A. If my interpretation of the law is right, he doesn't have that right.

Q. But suppose management and the man handling the claim, whether it is Mr. Peterson or the General Chairman of the Firemen, are not able to agree, and the man is still dissatisfied, so that the case is one for handling by the National Adjustment Board under Section 3. Then who handles the case with the National Adjustment Board concerning this claim?

A. As I understand the law, the individual has the right to employ an attorney, if he desires to, or employ anyone he desires to, before the Railroad Adjustment Board.

Q. And he could then be represented by the General Chairman of his organization to which he pays his dues in the handling of his case before the Adjustment Board?

A. In my opinion he could be represented by anyone of his own choosing.

Q. Do I understand you correctly to say that the Firemen have the right to say whether a man who has been promoted and who is serving as an engineer, but who is cut off because there is not [146] sufficient work for engineers, may return to service as a fireman?

(Testimony of George W. Laughlin.)

A. I think that is a question that addresses itself to the railroad management and the Firemen's Organization.

Q. Assuming that the Firemen have the right to say whether he may return, you agree with me that they have the right to say whether he may revert to firing service?

A. I think they have a right to adopt a uniform rule as to how they will go back to firing.

Q. They have a right also, do they not, to say whether he may displace a fireman who is his junior, and has seniority as a fireman?

A. Has control over the entire matter of him going back to fireman.

Q. They may attach, for example, conditions to that reversion, may they not? They may, for example, attach a condition that he must be cut off the list for at least ten days before he can make displacement, may they not?

A. I said they had complete control over the conditions under which they returned to firing positions.

Q. They have complete control over the conditions under which such a demoted man may make displacement, then, is that correct?

A. That is my understanding, yes.

Q. Is there anything, then, to prevent the Firemen's Organization from placing in their agreement a condition that a demoted man may not be allowed to displace as a fireman, may not be allowed to serve

(Testimony of George W. Laughlin.)

as a fireman unless the average earnings of the engineer with which he is classed has fallen below a certain stipulated mileage equivalent?

A. I do not think it has any right to say how much an engineer should earn before he is cut off the working list by the Engineers' Organization.

Q. That is not the question I asked you.

A. Maybe I didn't [147] understand you.

Q. I agree with you that the Firemen may not say how many miles an engineer may earn before he is cut off the working list of engineers, but is it not correct that they may say how many miles he may earn as an engineer, or how many miles the average of his class of engineers may earn before he is restored to the list of firemen?

A. I don't know that I can make my answer any plainer than to say that that is a question that addresses itself to the management and the Firemen's Organization, to provide or stipulate under what conditions an engineer who has been cut off of the board by the Engineers' Committee may return to the position of firing.

Q. Then you agree with me, do you not, Mr. Laughlin, that the cutting off of an engineer is one act?

A. That is right.

Q. And that is accomplished under the Engineers' Agreement, is it not?

A. That is right.

Q. And the restoration of this cut off man to the Firemen's List with right of displacement at

(Testimony of George W. Laughlin.)

the top of the list, is entirely a separate act, which is governed by the Firemen's Agreement?

A. Absolutely.

Q. And the conditions which may attach themselves to the cutting off of the man, and are expressed in the Engineers' Agreement, may or may not be the same as the conditions which attach themselves to the restoration of the man to the Fireman's List, and which are expressed in the Fireman's Agreement?

A. I feel that the Engineers' Committee has a right to make any agreement with the management that they may, regarding the removing from the working list of engineers.

The Court: Q. And restoration also, I presume?

A. Restoration to the Engineers' List, yes, sir.

[148]

Mr. Mason: Q. Do the Engineers' Committee have any right to say to the management what the conditions shall be under which a cut off engineer shall be qualified to displace at the head of the Firemen's List, or anywhere else on that list?

A. I don't think so.

Q. Now, I think you said that you could not recall any uniform practice as to the rule or custom with regard to the hiring as distinguished from the promotion of men to serve as engineers, is that correct?

A. I do not know that I said just as you have stated, Mr. Mason.

(Testimony of George W. Laughlin.)

Q. I do not intend to make you recall exactly what your testimony was in that regard.

Mr. Naus: What particular time are you referring to, Mr. Mason?

Mr. Mason: Prior to 1914, the Chicago Joint Agreement.

Q. You are not familiar, are you, with the grievance between the Southern Pacific and the Brotherhood of Locomotive Engineers in effect in 1903 and at subsequent dates prior to 1914?

A. I read those agreements, and my understanding is that an engineer cut off the working list back in those days did not have the right to come back firing, but they could go from one seniority district to another where the service of the company required more engineers.

Q. I am not speaking of demotion now; I am speaking of hiring as distinguished from promotion.

A. As I understand, you had an agreement to hire 50 per cent. of engineers on the Southern Pacific. I think I read that in some agreement.

Q. I want to refer you to the agreement of January 1, 1903, and ask you if that does not include on page 22 a list of special [149] requests that were granted, one of which is, "We ask that not less than 50 per cent. of engineers be hired when practicable."

A. I understand that is in the agreement. I read that, yes.

(Testimony of George W. Laughlin.)

Mr. Naus: What rule were you reading from?

Mr. Mason: I was reading from page——

Mr. Naus: Rule number.

Mr. Mason:—It is not a rule number. It is under the heading of "Special requests having been granted."

Q. Now, following that, Mr. Laughlin, I will show you the agreement of March 1, 1908, which was between the Southern Pacific and the Brotherhood of Locomotive Engineers, and refer you to Article XXXI, Section 6, and ask you if that does not read, "It is understood that not less than 50 per cent. of engineers be hired if available."

A. Well, I believe I said, Mr. Mason, that I read this in your schedule, but your attention is directed to the fact that this agreement was made before there was any Railway Labor Act, or before there was any Chicago Joint Agreement.

Q. Yes, that is correct.

A. And there were no reasons why Engineers or Firement could not make any kind of agreement, even though they transgressed on the other fellow, if the management would go along with them.

Q. Wasn't there some provision carried forward in the agreement of February 20, 1911, in Article XXXII, Section 6——

A. There wasn't any Railway Labor Act or any Chicago Joint Agreement even in that year.

Q. That is correct.

(Testimony of George W. Laughlin.)

A. The same condition prevailed.

Q. Generally, that provision as to the hiring of not less than 50 per cent. of engineers if available continued until 1917, did it not? A. 1913.

Q. 1913, was it? A. That is right. [150]

Q. Now, in 1914 there was an agreement between the Southern Pacific and the Brotherhood of Locomotive Engineers, a printed copy of which I show you, and that modified the other rule so as to provide something similar to the present rule, did it not? I am referring to Article——

A. Well, they adopted the provisions——

Q. Article XXXII, Section 6(a) of that agreement adopted the provisions of the Chicago Joint Working Agreement, did it not?

A. No, they adopted a rule that was similar to Chicago, or perhaps identical with it, but they never did adopt the Chicago Joint Agreement in its entirety on the Southern Pacific Railroad, so far as I know.

Q. And that is the rule that provides for the hiring of engineers where firemen are required to fire less than three years? A. That is right.

Q. And then in proportions up to——

A. Eight years.

Q. Where all engineers who are promoted as firemen are required to fire eight years or more?

A. Yes.

Q. That is the present provision in the agreement of the B. of L. E.?

A. I couldn't say. Perhaps it is.

Mr. Mason: I think that is all. Thank you.

Mr. Naus: That is all. I handed to counsel earlier this morning, if the Court please, copies of an exchange of letters that I now offer in evidence.

The Court: If there is no objection they will be received.

Mr. Mason: No objection.

Mr. Richberg: No objection.

Mr. Mason: Will the two be received as one exhibit?

Mr. Naus: Yes, it is an exchange of letters, and I think it ought to be one exhibit.

The Court: No. 10. [151]

(The documents in question were thereupon received in evidence and marked "Exhibit 10.")

EXHIBIT No. 10

Engineers' Compilation Page 343

FIREMEN'S ARTICLE 37

ENGINEERS' ARTICLE 30—SECTION 5

(Org. File E-5082-30-5;

(Co. File E&F 148-523

(Org. File E-4083-32-6(m);

(Co. Files E&F 111-97)

“ 60-120) ”

February 28, 1936.

Mr. A. J. Hancock,
Asst. General Manager,
Southern Pacific Company (Pacific Lines),
San Francisco, Calif.

Cases 3 and 8 Conference Docket, January 16, 1936.

Dear Sir:

We have for acknowledgment your letter February 27, 1936, reading:

“Referring to yours 20th, file E-5082-30-5, concerning claim for run-around in favor of Engineer A. M. Fisk, Coast Division.

As understood in conference this morning, this case will be disposed of by adopting the following:

‘It Is Agreed that when it is necessary to use demoted or hired engineers as the result of the engineers’ extra board being exhausted, the senior available engineer will be used, and

the fact that he may have earned his maximum mileage as a fireman will not prevent him from being used as an engineer until such time as he has earned the equivalent of the maximum mileage for engineers in the combined service.'

Please advise of your acceptance to complete the record.

It is understood that above settlement will also serve to close Case No. 8 of B. L. E. Grand Office Conference Docket of January 16th, 1936."

The foregoing is in accordance with understanding reached in conference and is accepted.

Yours very truly,

A. O. SMITH

By POP

Asst. Grand Chief Engineer,
BLE.

P. O. PETERSON,

General Chairman, BLE.

Engineers' Report Page 2097

(Copy)

Southern Pacific Company
65 Market St., San Francisco

E&F 148-523

A. J. Hancock,
Assistant General Manager

February 27th, 1936

Mr. A. O. Smith, Asst. Grand Chf. Engr.,
Brotherhood of Locomotive Engineers,
Pacific Building,
San Francisco, California.

Mr. P. O. Peterson, Gen. Chrmn.,
Brotherhood of Locomotive Engineers,
Pacific Building,
San Francisco, California.

Gentlemen:

Referring to yours 20th, file E-5082-30-5, concerning claim for runaround in favor of Engineer A. M. Fisk, Coast Division.

As understood in conference this morning, this case will be disposed of by adopting the following:

"It Is Agreed that when it is necessary to use demoted or hired engineers as the result of the engineers' extra board being exhausted, the senior available engineer will be used, and the fact that he may have earned his maximum mileage as a fireman will not prevent him from being used as an engineer until such time as

he has earned the equivalent of the maximum mileage for engineers in the combined service."

Please advise of your acceptance to complete the record.

It is understood that above settlement will also serve to close Case No. 8 of B. L. E. Grand Office Conference Docket of January 16th, 1936.

Yours very truly,

(Signed) A. J. HANCOCK

[Endorsed]: Filed 10/11/40.

Mr. Naus: I provide counsel with copies of another letter that I now offer, and I ask that the ruling wait until counsel has had an opportunity to read it. I would have given it to them earlier, but I did not have it available to me.

Mr. Richberg: If the Court please, not having seen this letter before, I had to read it hastily, but, as I see, it is a letter from one of the officials of the Southern Pacific to Chairman Moffitt, of the Firemen's organization, in regard to the disposition of certain individual claims which have been filed. It is precisely in that classification of material which I thought at the outset might be offered, individual cases which have nothing to do with the general rule or the construction of the Railway Labor Act. It concerns the disposition of a case between an official of the railroad and an official of

the organization. We could start with that and show volumes of what went on day by day. It would be an interminable matter, and it seems to me this opens the field of individual grievance cases.

The Court: Do you desire to object to it?

Mr. Richberg: I would object to the introduction of it.

The Court: You know that without any further investigation?

Mr. Richberg: I can see that by the type of letter it is.

Mr. Naus: I will ask that it be marked for identification for the moment, pending the ruling.

The Court: E.

(The document in question was thereupon marked as "Exhibit E for identification.")

Mr. Mason: May I ask, Mr. Naus, will you explain the purpose of the offer of Exhibit E for identification? [152]

Mr. Naus: I have no objection. I simply want to illustrate the practice. There is a letter of June 29, 1939. That is shortly before the complaint in this case was filed, and it shows the practice as between the railroad, who wrote the letter, and the fireman who received it, and correspondence concerning a claim made by the Firemen's Organization under the Engineers' Schedule, and the practice showing that they would go ahead and dispose of that claim under the Engineers' Schedule, but without regard to what had been agreed upon in

the Engineers' Schedule. It reads, "Such firemen entitled——"

Mr. Mason: That is the Firemen's Agreement?

Mr. Naus: Yes, but you will find later on in the next paragraph down here, after disposing of the Firemen's claim, which is related to another one, without regard to the Firemen's Schedule, it then disposes of a claim that was made under the Engineers' Schedule and settled without regard to what the Engineers' Schedule provided—that that has been the practice.

I now offer in evidence, having explained my purpose at the request of counsel, the document marked Exhibit E for identification.

Mr. Riehberg: Might I ask the Court to reserve the ruling on that matter for this reason: if this is merely a typical example of handling certain claims, we might have no objection to it. It opens up the door as to that type of evidence.

The Court: In other words, you want an opportunity to look into the matter?

Mr. Riehberg: Yes.

Mr. Naus: I might say counsel for the railroad is here. They certainly should be well informed of what the practice is, and, if I am not mistaken, they could produce a witness to show I [153] am wrong about it. I understand that letter is illustrative of the practice.

Mr. Mason: If your Honor please, I would have no objection to the reception in evidence of that letter, so far as the Defendant is concerned, the

Exhibit marked E for identification, if it can be understood that the exhibit marked A for identification is likewise received in evidence.

Mr. Naus: I will engage in no horse trading, Mr. Mason.

Mr. Mason: It is no horse trade. The two are definitely related one to the other, and Exhibit E for identification has no pertinency, not understandable; even, unless Exhibit A for identification is part of the record.

I will say this: Exhibit E for identification is the disposition of a claim made by the Firemen's Organization of a claim of an engineer member. The disposition of the fireman's claim, of course, is not material, and that disposition will be found in the paragraph at the foot of sheet 1, commencing with the words "Claim of Engineer Martin," and concluding at the top of the next page under the provisions of Article XI, Engineers' Agreement.

Now, without referring to the text of the letter, which will show the disposition was in line precisely with the recommendations which were treated as having the force of law, made by the President's Emergency Board, and embodied on pages 8 and 9, and in the preceding matter of Exhibit A for identification, Exhibit E for identification is not understandable. At least that is our position. I know about this letter, and I know about the Emergency Board report. I have seen them before.

The Court: You do not stipulate, then——

Mr. Mason: It seems to me one without the other means the [154] record is defective, that is all. I am perfectly willing to have the letter go in evidence if Exhibit A for identification likewise goes in, so the record is complete; otherwise, they are meaningless.

Mr. Weisell: Your Honor, may I add just one statement. Counsel refers to the report of the Emergency Board. I call attention to the fact that it violates the rule, inasmuch as the Engineers' rule says that all controversies shall be handled in accordance with the provisions of the Engineers' Schedule. That is similar phraseology. Here it is without reference to the schedule. It certainly is relevant to the schedule without reference to what the Emergency Board has done.

The Court: The Court will abide the further showing of Mr. Richberg. Let us proceed.

Mr. Weisell: I didn't hear your Honor.

The Court: I said, it will abide the further showing of Mr. Richberg. You said you wanted time to look into the matter before you made further objection?

Mr. Richberg: Yes.

Mr. Naus: If the Court please, I will say I am prepared to rest for the plaintiff until this is disposed of. Of course, I can't formally rest until the matter is concluded. I announce now I will rest when that is acted upon by counsel, and I act accordingly.

The Court: That closes the case, does it?

Mr. Naus: So far as the plaintiff is concerned.

Mr. Richberg: If your Honor please, regardless of the pertinence of this particular document, and without following up the statement of Mr. Mason, with which I agree, and that is it should be considered in connection with the report of the Emergency Board, [155] I am perfectly willing, if this is the last document, so as not to press it, to withdraw the objection if he is going to close his case.

The Court: If you have no objection, Exhibit E for identification will be received as No. 11.

(Exhibit E for identification was thereupon received in evidence and marked Exhibit 11.)

EXHIBIT No. 11

(Copy)

Southern Pacific Company
65 Market St., San Francisco

June 29, 1939.

Org. file F-5042-(1)-28

Co. " E&F 195-195

Mr. C. W. Moffitt,
General Chairman, BLF&E,
Pacific Building,
San Francisco, California.

Dear Sir:

Please refer to my letter April 6, 1939, file E&F 195-195, providing for settlement of the claim of Engineer R. B. Marden and various firemen, West-

ern Division, for additional compensation on or between the dates of February 1, 1933 and July 24, 1937, in connection with service performed by them on Yard Assignments Y-145, 149, 150, 659, 747, 748, 749 and 754 at Richmond.

The first two paragraphs appearing on page 2 of said letter are as follows:

"Claim of Engineer Marden: Check will be made for the period February 1, 1933 to April 30, 1936, to determine the amount due Mr. Marden during that period, on basis that engines involved should have been assigned to commence work at 8:00 AM, and without prejudice or reference to the provisions of Engineers' Agreement, this claim will be disposed of by allowing him one-half of the amount thus developed; likewise, similar check will be made for the period April 30, 1936 to July 25, 1937, and the total amount thus developed will be allowed Mr. Marden under the provisions of Article 11, Engineers' Agreement.

In regard to claims of Firemen: As agreed in conference, check will be made for the periods hereinbefore shown, to develop the amount of money due each fireman who performed service on the engines involved. Each such fireman entitled to payment will, without prejudice or reference to the provisions of Firemen's Agreement, then be allowed for the period February 1, 1933 to April 30, 1936, one-half of the amount

thus developed. For the period April 30, 1936 to August 13, 1937, each fireman entitled to payment will be allowed the full amount thus developed under the provisions of Article 28, Firemen's Agreement."

As result of our further discussion of this case, we desire to amend those two paragraphs to read as follows:

Claim of Engineer Marden: Check will be made for the period February 1, 1933 to August 2, 1935, to determine the amount due Mr. Marden during that period, on basis that engines involved should have been assigned to commence work at 8:00 AM and without prejudice or reference to the provisions of Engineers' Agreement, this claim will be disposed of by allowing him one-half of the amount thus developed; likewise, similar check will be made for the period August 2, 1935 to July 25, 1937, and the total amount thus developed will be allowed Mr. Marden under the provisions of Article 11, Engineers' Agreement.

In regard to claims of Firemen: As agreed in conference, check will be made for the periods hereinbefore shown, to develop the amount of money due each fireman who performed service on the engines involved. Each such fireman entitled to payment will, without prejudice or reference to the provisions of Firemen's Agreement, then be allowed for the

period February 1, 1933 to August 2, 1935, one-half of the amount thus developed. For the period August 2, 1935 to August 13, 1937, each fireman entitled to payment will be allowed the full amount thus developed under the provisions of Article 28, Firemen's Agreement."

Adjustment will be made in accordance with said amendment.

Yours truly,

(Signed) R. E. BEACH

cc-Mr. P. O. Peterson, BLE.

[Endorsed]: Filed 10/11/41.

Mr. Naus: "The plaintiff rests."

Mr. Mason: Mr. Naus, in order to save any further testimony, I wonder if you will stipulate with the defendant, and I am offering this stipulation also to Counsel for the Intervener, that the Brotherhood of Locomotive Engineers, through General Chairman Peterson, customarily and frequently handles and disposes of claims of the firemen members of the Brotherhood of Locomotive Engineers on a compromise basis and without prejudice or reference to any rule of the Firemen's Agreement which may be involved?

Mr. Naus: I regret that I cannot stipulate with

you, and I would invite if not challenge you to prove it.

Mr. Richberg: If it please the Court, we have no desire to offer any further evidence.

The Court: So you rest?

Mr. Richberg: We rest.

Mr. Mason: I have no desire to take further time of the Court. We won't proceed any further.

The Court: The defendant rests.

Mr. Naus: What is the wish of Court and Counsel with respect to presenting the matter?

The Court: I think it is preferable, as far as the Court is concerned, if you brief this matter.

Mr. Naus: I quite agree with the Court. That would be the [156] best approach.

The Court: However, I do not like to force my views. I think there is no sense in doing both.

Mr. Richberg: May I make this suggestion, if the Court please: I would be very glad to submit the matter entirely on briefs except for this extraordinary situation: I have not been able to ascertain yet what the *conditions* of the plaintiff are. I do not know.

The Court: Wouldn't you ascertain that in his opening brief?

Mr. Richberg: The point about it is this, if your Honor please: In the preparation of briefs, it is presumable the plaintiff will have to file an opening brief. I think it is reasonable for me to point out that I would not remain here for that. Then counsel on our side of the case are going to be separated

by the entire country. It would be more helpful if we could know before I left what the contentions of the plaintiff are.

Mr. Naus: If your Honor please, I would suggest this: Mr. Richberg and Mr. Prince will be separated. Mr. Weisell and I also will be, but I will have the advantage of a conference with him before he leaves. Now, I do not know of any life-and-death rush about the time of submitting this after briefs. I am perfectly willing that the Court be generous with counsel in the allowance of time, so there may be opportunity for communication back and forth through the mail. After I have a conference with Mr. Weisell, after the case concludes here, we will agree on the form of the brief, the contents of it. I would have no objection then if we went back up to the hotel now and sat down with Mr. Prince and Mr. Richberg and indicated to them generally our position. I quite agree with the Court that the Court's time should not be taken up with the two forms of argument. [157]

The Court: It is most extraordinary if a counsel makes his argument and then you are not prepared to meet it, but you answer it, and you expect me to remember that when the briefs are filed. Now, if you just try to inform each other of what you want to do, you might get together and argue it, but if you try to convince me about your version of the case, I won't do it until I see the briefs. After all, what I want to see is the authorities. Argument is only persuasive. It is nice for a jury. But you wouldn't

want to persuade me to decide something adverse to the law.

Mr. Richberg: May I put it this way, if the Court please: I feel, in view of, I might say, the complete confusion as to what the plaintiff's argument is on this subject, that the Court might be in equal confusion, and I think, frankly, in the thirty-five years I have been practicing I have never been in a case where I came to the end of the case without knowing what the plaintiff's contentions were. I heard the statement made here the plaintiff has waived all the contentions he has named, and I do not understand what the contentions are. Now, my only thought was that possibly in summing up the matter before your Honor we both could get a clearer understanding of what the issues were and it might be helpful to the Court, but I do not want to take the time of the court needlessly when the Court has to sit down and read some briefs.

The Court: After all, when this matter is submitted and comes before me, perhaps two or three months later, and I have listened to a short argument here—I presume you will not take over an hour to a side, maybe less than that,—I listen to it, and what value will it be when I finally sit down to look at the briefs and look at the cases? The only way it would be of any [158] value would be to have it taken down and read it again in the light of your work, because this matter comes down to a pretty close point, apparently.

I regret these two great Brotherhoods could not have gotten together and adjusted it themselves. That is the way I feel about it. I think it is important enough for them to do so. Both of them are really following the same vocation, only they are practicing the law of seniority, and it seems regrettable that there should not be an understanding that would be fair to both engineers and firemen. However, that is not my business, of course, to suggest that. I suppose, because I am here merely to determine the issues presented. I regret that you found it necessary to apply to a court.

Now, I suppose time for argument can be given you, but do you really think it would benefit, excepting you will find out Mr. Naus', the Engineers' and Mr. Weisell's contentions in advance of their brief? Of course, certainly they will have to put something in their brief.

Mr. Naus: That is correct.

The Court: I do not want to appear as if I do not want to listen to counsel. I refuse to be put in that position. But I will say this: You have asked me and I have replied. Now, you gentlemen say what you want to do.

Mr. Naus: "I fully agree with your Honor that we should not have two forms of argument. Of the two I vastly prefer the brief."

The Court: There is a permanent record, and if you do not put it in there it is your fault. If you do put it in there I see it, and if I err, I err because I do not accept it.

Mr. Naus: That is it. To be fair to the Court and to be fair to ourselves, I think we should have one argument, and I [159] feel that the written briefs is the superior form.

Mr. Richberg: I am entirely agreeable that we withdraw the request for oral argument. I think Mr. Mason feels the same way.

Mr. Mason: Yes, I am agreeable that the case be disposed of on briefs.

Mr. Naus: If the Court please, I would suggest, in view of the attorneys involved, that the plaintiff be given 30 or 40 days to open, and a corresponding time for the other sides for reply. If they want less than that, I will agree on less. If they want to make it 20 and 20, I will do that. I am merely making a suggestion.

The Court: 30, 30 and 20?

Mr. Richberg: That will be satisfactory, if the Court feels that is desirable.

The Court: Do you feel your work would be rushed? It seems to me a proper procedure would be to permit you to have a further showing if you need it. I do not know about the field that you have here. But once you have defined it, I think it is a very limited one. I wish there were more law on it. When you tell me there was only one case, I wish there were a great many, that I might be guided.

Mr. Richberg: Your Honor has allowed 30 days?

The Court: 30, 30 and 10.

Mr. Naus: I thought you said 20. I will have to correspond—

The Court: Pardon me. The time will start from the filing of the transcript in the record.

Mr. Naus: Then the Reporter may file the transcript in the Clerk's Office in San Francisco and notify me of the date of filing?

The Court: I think that is fair. Sometimes the transcript is slow in being filed. All right, instead of 10, it will be 20. [160]

Mr. Richberg: If your Honor please, would you care to make any suggestions, or leave it entirely to the wisdom of counsel as to the length of briefs?

The Court: Of course, I will say this. I would rather leave that to you as to what you think of the matter. Of course, if you go too far afield it is not going to help me.

Mr. Naus: I prefer to have it left to counsel.

The Court: I would rather leave that to your judgment. Of course, you must know sometimes a court gets very much worn by briefs that are too far afield. I have had some briefs in which I couldn't see the pertinency of some of the matter. But, of course, that does not appear here to-day. I don't think it will happen.

Mr. Richberg: May I ask, if the Court please, since we have three parties involved here, I assume that by the order the briefs, as far as the defendant and the intervener are concerned, be filed at the same time?

The Court: Well, I took that for granted. Apparently they will be somewhat the same. You probably, both of you, are really taking a stand against

the plaintiff, and as such I was making the second 30 days applicable to both. I wasn't making it one brief; I was making it separate briefs on the part of each.

Mr. Naus: The order they got for intervention had them intervening as a defendant, a most unusual form of intervention, but they lined themselves up as defendants.

The Court: I think each one is entitled to present a brief of their own. Naturally, counsel for the plaintiff would probably have to put in two briefs to answer the two.

Mr. Naus: I can answer their two briefs in one reply, I [161.] presume.

The Court: I presume that concludes the case until it is submitted. I think Mr. Mason and Mr. Naus are familiar with the rule that you must make a formal submission after the briefs are filed before the Court takes up the matter.

Mr. Naus: I know that.

The Court: I presume Mr. Prince would know that, too. But I suggest to other counsel that if the others do not act, you will have to write formally submitting the matter.

Mr. Naus: Mr. Prince and I respectively will act for the Eastern counsel in the matter.

Mr. Richberg: If the Court please, I think the record is still open. I wish to make a formal motion for judgment on the pleadings, and formal motion for judgment on the evidence. I would like to have those motions entered, if I may.

The Court: They will be entered.

Mr. Richberg: I think also we should follow up the identification, in order to preserve the record, and move for the admission of the exhibits which were offered and which were identified.

The Court: I presume all of those exhibits that were marked for identification, except the one that has just been received, were bad.

Mr. Richberg: Yes. We have on the record an objection.

The Court: As I take it, no one has taken the attitude that they wished to withdraw those objections.

Mr. Naus: No.

The Court: The ruling will stand. I do not suppose you need any exceptions or objections other than those that you stated when the trial was going on.

Mr. Richberg: We want to be sure the matter is in the re- [162] cord.

Mr. Naus: Might I say, for two reasons, one the New Rules adopted in September, 1938, and the other the fact that this is not the ordinary type of case, but this is a suit for declaration, I do not know what a motion for judgment is, before your Honor decides the legal relation of the parties. It won't be a judgment one way or the other; it is a declaration.

The Court: I understand that, Mr. Naus, but I do not object to anyone making these motions. I am

not shutting counsel off from making what he feels is necessary in the case.

Mr. Prince: On the same line, your Honor, in connection with the matter of procedure, we are interested in seeing we do not fall into any pitfalls: as I understand the practice, we will not formally submit this case until the briefs are in?

The Court: That is correct. You have announced that the taking of testimony is over on the part of all of you, and you have agreed that the only sort of presentation you have got to make is that of briefing, and when that is done it is complete. But before it is actually before the Court to be determined, our rules require that you make a formal submission announcing that the matter of the briefs has either been consummated or the time has elapsed so that counsel is debarred further, unless he gets an order, from filing further briefs. For instance, suppose the first brief were filed, and counsel for the defense and intervenor did not file in the next thirty days. Then after the thirty-first day Mr. Naus could come in and submit it, because you have apparently abandoned the right to file it. The only way you could enlarge that would be by a court order.

Mr. Naus: I will say, if the Court please, I am sure everybody will get their brief in, within the original or enlarged [163] time, but I will undertake, when the briefs are in, to see that an ex parte motion is made in the usual way for submission.

The Court: The only reason I call that to your attention is that we have had one or two unfortu-

nate experiences—I should say I have had, I know Judge St. Sure has, and maybe the other judges. Six months after the filing of the briefs someone wants to know why the Judge is not deciding the case, and when the matter is looked up, sure enough, the case was never submitted, because of the neglect of counsel in not submitting it. We want to decide cases as soon as submitted, to keep the work up. We do not go over the record every so often to see if all the briefs are in.

Mr. Naus: Apropos of that, your Honor, as I understand the practice—the practice I have always followed at least—differing from the State Court, the briefs are filed with the Clerk rather than at the Judge's Chambers.

The Court: That is preferable. I have accepted them and filed them, myself.

Mr. Naus: Then when the order of submission is made, the Clerk is charged with the duty of sending the papers to the Court?

The Court: That is right, as soon as the order comes in he simply notifies the Court. If the submission has been made to the Clerk, that is the procedure. You can write to the Judge.

Mr. Prince: If the Court please, I have one other thing in my mind that I think ought to be made clear. Out of a great abundance of caution Mr. Richberg and I both feel we should make a more elaborate motion for judgment in this case and for judgment on the pleadings than has been made.

Mr. Naus: I will consent right now that they may either include that in their briefs or accompany their briefs with such a [164] motion.

Mr. Prince: A written motion if we so desire.

The Court: Do you want to file a written motion with the Court?

Mr. Prince: Mr. Naus has given us that privilege.

The Court: He has given you more privileges than the Court does. I always say you may file a written statement of a motion that will be co-extensive with what you expect in court, but Mr. Naus goes further and says you can make any.

Mr. Naus: Sure, he can make any.

The Court: Under those circumstances, I suggest you do not delay too many days in filing that.

Mr. Naus: It will be a nicely written paper motion for judgment following out our suggestion.

The Court: If there is nothing further, we will proceed to close.

(Thereupon the Court adjourned.)

[Endorsed]: Filed Oct. 31, 1940. [165]

PLAINTIFF'S EXHIBIT No. 1

AGREEMENT

Between the

Southern Pacific Company
(Pacific Lines, Excluding Former El Paso and
Southwestern System)

and the

General Committee
of Adjustment

of the

Brotherhood of
Locomotive Engineers
Southern Pacific Company
(Pacific Lines)

Effective January 9, 1931

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(Plaintiff's Exhibit No. 1 continued)

AGREEMENT

Between Southern Pacific Company (Pacific Lines)
and General Committee of Adjustment of
Brotherhood of Locomotive Engineers of the
Southern Pacific Company (Pacific Lines) (ex-
cept former El Paso & Southwestern System).

It is hereby understood and agreed between the
Management of the Southern Pacific Company (Pa-
cific Lines) and General Committee of Adjustment
of Brotherhood of Locomotive Engineers, that the
following rules and regulations covering rates of
pay and working conditions of engineers on the
Pacific Lines of the Southern Pacific Company
(except former El Paso & Southwestern System)
shall be in effect on and after May 1st, 1928.

Passenger Service.

ARTICLE 1.

Basic Day.

Section 1. One hundred miles or less (straight-
away or turn-around), five hours or less, except
as provided in Article 6, Section 1, shall constitute
a day's work; miles in excess of 100 will be paid
for at the mileage rate provided, according to class
of engine.

Valley Districts.

Sec. 2. On all parts of the System, excepting
between points as noted in Section 3, the minimum
rates of wages per day of an engineer shall be:

(Plaintiff's Exhibit No. 1 continued)

(a) Rates of Pay.

| Weight on Drivers | Engineers Per Day |
|------------------------------|----------------------|
| Less than 80,000 lbs. | \$6.56 |
| 80,000 to 100,000 lbs. | 6.56 |
| 100,000 to 140,000 lbs. | 6.65 |
| 140,000 to 170,000 lbs. | 6.73 |
| 170,000 to 200,000 lbs. | 6.82 |
| 200,000 to 250,000 lbs. | 6.90 |
| 250,000 to 300,000 lbs. | 6.99 |
| 300,000 to 350,000 lbs. | 7.07 |
| 350,000 to 400,000 lbs. | 7.16 |
| 400,000 to 450,000 lbs. | 7.24 |
| 450,000 to 500,000 lbs. | 7.33 |
| 500,000 lbs. and over | 7.41 |
| Mallets regardless of weight | 7.63 |

Mountain Districts.

Sec. 3. Between Eugene and Dunsmuir via Klamath Falls; Roseburg and Gerber; Sacramento and Sparks; Bakersfield and Los Angeles; Mojave and Owenyo; Los Angeles and Indio, including branches between Los Angeles and Indio, the minimum rates of wages per day of an engineer shall be:

(a) Rates of Pay.

| Weight on Drivers | Engineers Per Day |
|-------------------------|----------------------|
| Less than 80,000 lbs. | \$7.28 |
| 80,000 to 100,000 lbs. | 7.28 |
| 100,000 to 140,000 lbs. | 7.45 |
| 140,000 to 170,000 lbs. | 7.65 |
| 170,000 to 200,000 lbs. | 7.74 |
| 200,000 to 250,000 lbs. | 7.82 |
| 250,000 to 300,000 lbs. | 7.91 |
| 300,000 to 350,000 lbs. | 7.99 |

(Plaintiff's Exhibit No. 1 continued)

| | |
|------------------------------|------|
| 350,000 to 400,000 lbs. | 8.08 |
| 400,000 to 450,000 lbs. | 8.16 |
| 450,000 to 500,000 lbs. | 8.25 |
| 500,000 lbs. and over | 8.33 |
| Mallets regardless of weight | 8.55 |

Minimum Daily Guarantee.

Sec. 4. (a) In all passenger service, the earnings from mileage, overtime or other rules applicable, for each day service is performed, shall be not less than \$7.46 for engineers.

In applying the \$7.46 minimum for engineers in passenger service, it is intended that on assignments where the men run so as to make only the equivalent of a single trip in one direction each day, they shall be paid the guaranteed minimum for each single trip.

For example: On a 100-mile division men double the road Monday, lay over Tuesday, double Wednesday, and lay over Thursday, etc. They should be allowed the minimum for each leg of their turnaround trip.

On the same division other crews double the road Monday and Tuesday, and lay over Wednesday, double Thursday and Friday, and lay over Saturday. These men make the equivalent of four single trips every three days, and therefore would not be entitled to the minimum for each trip.

(Plaintiff's Exhibit No. 1 continued)

Question 6, Int. No. 1, Supplement No. 24:

May amounts earned under overtime rule, terminal delay, backouts, etc., be applied against these guarantees?

Decision: Yes.

Question 7, Int. No. 1, Supplement No. 24:

Are former guarantees higher than provided by this Section maintained?

Decision: Yes.

Question 8, Int. No. 1, Supplement No. 24:

May runs of under 80 miles in each direction be placed on a one way basis and a minimum day allowed in each direction?

Decision: Yes, if definitely assigned, in which case overtime rules applicable to through passenger service in effect shall apply.

Rates For Electric and Gasoline Passenger Service.

Sec. 4. (b) Engineers employed on electric locomotives in passenger service to be paid the rates shown in preceding tables, based upon weight on drivers. In the application of the rates for various driver weights in electric locomotive service, the total weight on drivers of all units operated by one engine crew shall be the basis for establishing the rate.

(c) Electric car service, whether operated in multiple unit or single unit, to be paid minimum rate in preceding tables.

(Plaintiff's Exhibit No. 1 continued)

Question 11, Int. No. 1, Supplement No. 24:

Do the minimum earnings fixed by Section 4 (a) also apply in short turnaround electric passenger service whether operated by electric locomotive or multiple unit?

Decision: Yes.

(d) All motor cars used in passenger service operated under train rules by engineers, regardless of whether operated by gasoline, steam, electricity, or other motive power, to be paid minimum rate in preceding tables.

Freight Service.

ARTICLE 2.

Basic Day.

Section 1. In all classes of service covered by Article 2, 100 miles or less, eight hours or less (straight-away or turn-around) shall constitute a day's work; miles in excess of 100 will be paid for at the mileage rates provided, according to class of engine or other power used.

Question 47, Int. No. 1, Supplement No. 24:

Certain railroads formerly paid 100 miles between terminals notwithstanding the distance may have been less than 100 miles. Does this section permit operating turnarounds turning at terminal on continuous time and mileage?

Decision: No. Schedule rules and accepted practices will govern.

(Plaintiff's Exhibit No. 1 continued)

Valley Districts.

Sec. 2. Minimum rates of pay on all parts of the System, excepting between points as noted in Section 3, for engineers in through and irregular freight, pusher, helper, mine run or roustabout, belt line or transfer, work, wreck, construction, snow-plow, circus trains, trains established for the exclusive purpose of handling milk and all other unclassified service shall be as follows:

(a) Rates of Pay.

| Weight on Drivers | Engineers Steam, Electric or other power per day | |
|--------------------------------|--|--------|
| | Through | Local |
| Less than 80,000 lbs. | \$7.28 | \$7.80 |
| 80,000 to 100,000 lbs. | 7.37 | 7.89 |
| 100,000 to 140,000 lbs. | 7.46 | 7.98 |
| 140,000 to 170,000 lbs. | 7.71 | 8.23 |
| 170,000 to 200,000 lbs. | 7.88 | 8.40 |
| 200,000 to 250,000 lbs. | 8.05 | 8.57 |
| 250,000 to 300,000 lbs. | 8.20 | 8.72 |
| 300,000 to 350,000 lbs. | 8.35 | 8.87 |
| 350,000 lbs. and over | 8.56 | 9.08 |
| Mallets less than 275,000 lbs. | 9.10 | 9.62 |
| Mallets 275,000 lbs. and over | 9.33 | 9.85 |

Note: The terms "pusher" and "helper" are synonymous, meaning "helper service".

Question 31, Int. No. 1, Supplement No. 24:

Where mine run, belt line, or transfer service, pusher and helper service, etc., was formerly paid yard rates, and is by this article paid the same rates as through freight service, is such service

(Plaintiff's Exhibit No. 1 continued)

now subject to road conditions, such as terminal switching allowances, final terminal delays, etc.?

Decision: No; but through freight rules as to mileage and road overtime shall apply.

Mountain Districts.

Sec. 3. Between Eugene and Dunsmuir via Klamath Falls; Roseburg and Gerber; Sacramento and Sparks; Bakersfield and Los Angeles; Mojave and Owenyo; Los Angeles and Indio, including branches between Los Angeles and Indio, the minimum rates of wages per day of an engineer shall be:

(a) Rates of Pay.

| Weight on Drivers | Engineers Steam, Electric or other power per day | |
|--------------------------------|--|--------|
| | Through | Local |
| Less than 80,000 lbs. | \$7.51 | \$8.03 |
| 80,000 to 100,000 lbs. | 7.60 | 8.12 |
| 100,000 to 140,000 lbs. | 7.71 | 8.23 |
| 140,000 to 170,000 lbs. | 7.96 | 8.48 |
| 170,000 to 200,000 lbs. | 8.13 | 8.65 |
| 200,000 to 250,000 lbs. | 8.30 | 8.82 |
| 250,000 to 300,000 lbs. | 8.45 | 8.97 |
| 300,000 to 350,000 lbs. | 8.61 | 9.13 |
| 350,000 lbs. and over | 8.82 | 9.34 |
| Mallets less than 275,000 lbs. | 9.35 | 9.87 |
| Mallets 275,000 lbs. and over | 9.58 | 10.10 |

Sec. 4. (a) For local or way freight service, 52 cents per 100 miles or less shall be added to the through freight rates, according to class of engine. Miles over 100 to be paid for pro rata. Local rates tabulated in this Article determined by this method.

(b) In freight service of over 100 miles on mountain districts engineers will be paid 46 cents per 100 miles in addition to rates shown in Article 2, Section 3.

Excess Mileage.

ARTICLE 3.

Between the following named points, mileage in excess of actual distance between such points, shall be allowed, viz.:

Passenger Service.

| Between | Actual Mileage | Allowed Mileage |
|----------------------------------|-------------------|--------------------|
| Los Angeles and Bakersfield..... | 170 | 175 |
| Bakersfield and Mojave..... | 68 | 75 |
| Rocklin and Truckee..... | 97 | 105 |
| Roseville and Truckee..... | 101 | 109 |
| Red Bluff and Dunsmuir..... | 99 | 105 |
| Gerber and Dunsmuir..... | 109 | 115 |

Freight Service.

| Between | Actual Mileage | Allowed Mileage |
|-----------------------------|-------------------|--------------------|
| Los Angeles and Mojave..... | 100 | 105 |
| Mojave and Bakersfield..... | 68 | 75 |
| Sacramento and Truckee..... | 120 | 152 |
| Roseville and Truckee..... | 101 | 121 |
| Roseville and Summit..... | 87 | 104 |
| Roseville and Norden..... | 85 | 102 |
| Norden and Roseville..... | 86 | 103 |
| Rocklin and Truckee..... | 97 | 117 |
| Rocklin and Summit..... | 83 | 100 |
| Colfax and Summit..... | 51 | 61 |
| Colfax and Norden..... | 50 | 60 |
| Colfax and Truckee..... | 65 | 78 |
| Red Bluff and Dunsmuir..... | 99 | 138 |

(Plaintiff's Exhibit No. 1 continued)

| | | |
|-----------------------------|------|------|
| Gerber and Dunsmuir..... | 109 | 148 |
| Dunsmuir and Ashland..... | 108 | 139 |
| Dunsmuir and Hornbrook..... | 72 | 101 |
| Hornbrook and Ashland..... | 36 | 50 |
| Ashland and Roseburg..... | 143½ | 144½ |

Allowed mileage stated as per this Article will not be allowed on runs not covering the entire distance between points named.

Class Rates of Engines and
Combination Service.

ARTICLE 4.

Section 1. Class rates of engines as specified in Articles 1 and 2 shall apply to all rates of pay, except as otherwise provided.

Sec. 2. (a) Where two or more engines of different weights on drivers, are used during a trip or day's work, the highest rate applicable to any engine used should be paid for the entire day or trip.

(b) If a type of locomotive is introduced on a railroad which formerly was not in use on that railroad and the rates herein provided are less than those in effect on other roads in the territory, the rates of the other roads shall be applied.

Sec. 3. Road engineers performing more than one class of road service in a day or trip, will be paid for the entire service at the highest rate applicable to any class of service performed, with a minimum of 100 miles for the combined service, ex-

(Plaintiff's Exhibit No. 1 continued)

cept when used in freight or passenger service over part of a trip and balance run light, will be paid on same basis as the engineer who is helped.

It is understood that under this rule, excess mileage shown in Article 3 will not be paid unless service covers the entire specified territory.

Beginning and Ending of a Day.**ARTICLE 5.**

In all classes of service, an engineer's time will commence at the time he is required to report for duty, and shall continue until the time the engine is placed on the designated track or he is relieved at terminal.

Turnaround Trip Service.**ARTICLE 6.**

Section 1. (a) On short-turnaround passenger runs no single trip of which exceeds eighty (80) miles, including Suburban Service, overtime shall be paid for all time actually on duty or held for duty in excess of eight (8) hours (computed on each run from the time required to report for duty to end of that run) within ten (10) consecutive hours; and also for all time in excess of ten (10) consecutive hours computed continuously from the time first required to report to final release at end of last run. Time shall be counted as continuous service in all cases where the interval of release from

(Plaintiff's Exhibit No. 1 continued)

duty at any point does not exceed one hour. Overtime at one-eighth of the daily rate according to class of engine and district, with a minimum of $83\frac{1}{2}$ cents per hour to be computed on the minute basis. This rule applies regardless of mileage made; for calculating overtime under this rule the Management may designate the initial trip.

Question 19, Int. No. 1, Supplement No. 24:

Does this rule apply to extra and unassigned service?

Decision: Yes; in which case call shall specify whether crew is to be paid on turnaround or straightaway basis.

Question: Engineer assigned to short turnaround passenger service on certain dates uses motor car on certain trips of his assignment and steam train on balance of assignment. How should he be compensated?

Answer: At the highest rate of engine used, as per Section 2 (a), Article 4.

Question: (a) Is it permissible to hold engineer in short turnaround passenger service on duty at turning point of assignment and compensate him for all time on duty under 8-within-10 hour rule?

(b) In case it is desired to relieve one member of crew at turning point and hold the other on duty to care for engine, who should be relieved?

Answer: (a) Yes.

(b) The engineer should be relieved.

(Plaintiff's Exhibit No. 1 continued)

Sec. 1. (b) If it is desired to use extra passenger, pooled freight or extra engineer in short turnaround extra passenger service, notice of such intention must be given at time call is made for initial trip. It is not necessary that number of trips or destination be specified in call.

(c) Pooled or extra engineers used as helpers on passenger trains not covering entire district or division over which train is run do not come under the eight within ten hour rule, and should therefore be compensated under provision of schedule applicable to extra helpers.

Note: This not to apply to engineers filling vacancies in assigned helper service.

Sec. 2. An engineer making an irregular turnaround trip in passenger service, turning between terminals and returning to starting point, any leg of which exceeds eighty (80) miles, 20 miles per hour shall be the basis for computing overtime; overtime at the rate of $12\frac{1}{2}$ miles per hour, according to class of engine and district.

Sec. 3. (a) An engineer making an irregular turnaround trip in freight service, turning between terminals and returning to starting point on runs 100 miles or less, eight hours or less, 100 miles will be allowed and overtime will begin at the expiration of eight hours. On runs of over 100 miles, overtime will begin when the time on duty exceeds the miles run divided by $12\frac{1}{2}$. Overtime shall be paid for on the minute basis, at an hourly rate of $\frac{3}{16}$ ths of the

(Plaintiff's Exhibit No. 1 continued)

daily rate, according to class of engine or other power used.

(b) Engineers in pool or irregular freight service may be called to make short trips and turnarounds with the understanding that one or more turnaround trips may be started out of the same terminal and paid actual miles with a minimum of 100 miles for a day provided, (1) that the mileage of all the trips does not exceed 100 miles, (2) that the distance run from the terminal to the turning point does not exceed 25 miles, and (3) that engineers shall not be required to begin work on a succeeding trip out of the initial terminal after having been on duty eight consecutive hours, except as a new day, subject to the first-in first-out rule or practice. (This does not apply to engineers in pusher and helper service, mine runs, work trains, wreck trains.)

The number of trips need not be specified when men are called, but the call should specify short turnaround service.

Question 79, Int. No. 1, Supplement No. 24:

Must the crew actually leave the terminal before the expiration of eight hours?

Decision: No, but crews should not ordinarily be required to begin work on a second or succeeding trip when it is apparent that the departure from the terminal will be delayed beyond eight hours from going on duty on initial trip.

(Plaintiff's Exhibit No. 1 continued)

Question 80, Int. No. 1, Supplement No. 24:

In operating turnaround service under this section, may crews be turned at a terminal out of which other crews operate?

Decision: Yes.

Question 81, Int. No. 1, Supplement No. 24:

Where crews are called for turnaround service in what territory may they be used?

Decision: They may be used in either or both directions out of the initial terminal in territory where it is permissible to use them for other than short turnaround trips.

Note: An engineer after completing each trip in short turnaround service shall be placed at the foot of the list and permitted to work his way toward first out position, but may, if needed for another short turnaround trip within eight hours from time ordered to report for duty on first trip, be run around other engineers without turnaround penalty.

If engineer placed at foot of list reaches first out position prior to expiration of eight hours from time first ordered to report for short turnaround service and can be used on another short turnaround trip before the expiration of the first eight hours, it will be optional with the Company to call him for other service or hold him for short turnaround service.

The foregoing applies to Section 3 (b), Article 6, only.

(Plaintiff's Exhibit No. 1 continued)

Sec. 4. Whenever miles run exceed the limits as specified in Sections 1, 2 and 3 of this Article, actual miles will be allowed.

Sec. 5. If the trip is a turnaround, as specified in Sections 2 and 3. (a) of this Article, the starting point is understood to be the terminal as well.

Sec. 6. (a) Engineers assigned to a series of branch freight, combination freight and passenger, or mixed runs, or established main line turnaround local freight service, will compute their time as a single trip. Bulletin shall name terminals and turning points and will definitely specify service to be performed. In no case shall any portion of the assignment include trip or trips in helper service.

Note: Last sentence agreed to with the understanding that this will not set aside or supersede decisions wherein engineers were used to push trains out of yard within yard limits.

(b) Continuous time to be allowed from time engineer is required to report for duty on initial trip and to end upon completion of final trip of assignment with a minimum of 100 miles. On runs of 100 miles or less, overtime will begin at the expiration of eight hours, and on runs of over 100 miles, overtime will begin when the time on duty exceeds the miles run divided by $12\frac{1}{2}$. Overtime shall be paid for on the minute basis at an hourly rate of three-sixteenths of the daily rate, according to class of engine or other power used. When miles run exceed these limits actual miles will be allowed.

(Plaintiff's Exhibit No. 1 continued)

Question: Assignment under this Section, A to B and return, distance 90 miles round trip; thence in opposite direction A to C and return, distance 59 miles; total mileage of assignment 149 miles. On a certain date engineer consumes 11 hours 45 minutes making trip A to B and return, and is released without making trip A to C and return. How should he be compensated?

Answer: Allow 149 miles, mileage of assignment, and overtime, if any, after schedule of 11 hours 55 minutes.

(c) Engineers assigned under this rule who are required to perform work not a part of regular assignment, such as pulling trains into terminal account of crew of which tied up under law, engine failure, or account shortage of fuel or water in locomotive, will be paid a minimum of 100 miles for each time so used in addition to assignment; in like manner when engineers en route are taken off assignment and required to bring engine or train to terminal, crew of which tied up under law, or account engine failure, or shortage of fuel or water in locomotive, will be paid a minimum of 100 miles for each time so used in addition to assignment. If used en route to make side trip off assigned territory and such trip covers a distance of more than twelve miles in one direction, a minimum of 100 miles will be allowed in addition to assignment. In each case rates and rules covering such service will govern. Actual time in other

(Plaintiff's Exhibit No. 1 continued)

service to be excluded in computing overtime in assigned service. Under the above conditions, engineer used to bring disabled train to terminal will compute time as a single trip from time leaving assignment until return thereto with a minimum of 100 miles.

Note: In cases where main track is obstructed due to derailments, engine failures, break-in-twos and traffic is threatened with serious delay and assigned engineers under this Article are used to assist in relieving obstruction, question of run-arounds will be disposed of on their merits between representatives of the Company and the Brotherhood of Locomotive Engineers.

(d) Switching before beginning of first trip and after the completion of final trip will be computed separately and paid for at one-eighth of the daily rate applying to class of engine, service and district on the minute basis, irrespective of time on road. Switching time to be continuous from the time work is begun until it is completed and train coupled together. This time not to be counted in computing road overtime; except that when the number of hours switching is not equal in money value to the sum of the money values of switching hours and road overtime hours, switching time shall not be paid for and the road overtime shall be calculated and paid for the same as if switching had not occurred.

(Plaintiff's Exhibit No. 1 continued)

Example—

| | |
|---|--------|
| Required to report at A | 7 A.M. |
| Switches at A until | 9 A.M. |
| Runs A to B, return A, distance 100 miles | 3 P.M. |
| Switches A until | 5 P.M. |
| Relieved A | 5 P.M. |

Compensation—100 miles, plus 4 hours switching at one-eighth of daily rate. Such allowance being greater than two hours' overtime at time and one-half.

Example—

| | |
|-------------------------------|--------|
| Required to report at A | 7 A.M. |
| Switches at A until | 8 A.M. |
| Runs A to B, return A | 4 P.M. |
| Switches A until | 5 P.M. |
| Relieved A | 5 P.M. |

Compensation—100 miles, plus two hours' overtime at three-sixteenths of the daily rate per hour. In this case the money value of the road overtime at three-sixteenths of the daily rate exceeds the allowance of two hours' switching at one-eighth of the daily rate.

Logging Service.

ARTICLE 61½.

Section 1. (a) Engineers assigned to Logging Service exclusively will be paid freight rates, ac-

(Plaintiff's Exhibit No. 1 continued)

cording to class of locomotive and district on which used; 100 miles, or less, eight hours, or less, to constitute a day; over 100 miles, pro rata. On runs of 100 miles or less overtime will begin at the expiration of eight hours; on runs of over 100 miles overtime will begin when the time on duty exceeds the miles run divided by $12\frac{1}{2}$. Overtime shall be paid for on the minute basis, at an hourly rate of three-sixteenths of the daily rate, according to class of engine or other power used. Time to be computed continuously from the time required to report for duty until released at home or district terminal.

(b) Assignments of engineers to Logging Service exclusively will be made by bulletining vacancies or new runs in accordance with rules in effect. Engineers to be assigned to one home terminal and may be run in and out of said home terminal during a day's work in Logging Service, without regard for rules defining the completion of trips.

(c) Engineers assigned to Logging Service exclusively and used in other service will be allowed a minimum of one hundred miles at the rate applying on the locomotive in the service, and on the district where performed for each time so used. Time thus consumed to be excluded in computing overtime in Logging Service. Rules defining the completion of trip to govern for all service performed outside of the Logging Service assignments.

(d) Engineers assigned to Logging Service ex-

(Plaintiff's Exhibit No. 1 continued)

clusively will be allowed one hundred miles at the rate applying on the locomotive on which last used for each calendar day of assignment on which no service is begun.

Helper Service.

ARTICLE 7.

Section 1. (a) Engineers assigned to helper service exclusively will be assigned to one home terminal and shall be paid through freight rates as specified in Section 2, Article 2, and Sections 3 and 4 (b), Article 2, with a minimum of \$7.28.

(b) The time of an engineer assigned to helper service exclusively will commence at the time he is required to report for initial duty, and will conclude at the time the engine is placed on the designated track or relieved at his home terminal, or regular division terminal, upon completion of final trip begun within eight hours from initial call. If used again on a trip which departs from home terminal or a regular division terminal, after the expiration of eight-hour helper day, he will begin a new day irrespective of dates.

(c) An engineer assigned to helper service exclusively will be allowed a minimum of 100 miles for the first eight hours or less; when the miles run exceed these limits, actual miles will be allowed. When mileage is 100 miles or less, overtime will begin at the expiration of eight hours; when mileage in excess of 100 miles is made, over-

(Plaintiff's Exhibit No. 1 continued)

time will begin when: the time on duty exceeds the miles run divided by $12\frac{1}{2}$. Overtime shall be paid for on the minute basis at an hourly rate of three-sixteenths of the daily rate according to class of engine or other power used.

Question: (a) Engineer called and before starting service call is annulled?

Answer: Allow minimum of two hours "called and not used".

Question: (b) After having made trip in helper service is again called and engineer released without service on second call before expiration of 8-hour helper day?

Answer: Call having occurred during period engineer under pay, and call annulled prior to expiration of 8-hour helper day, no additional compensation allowed.

Question: (c) Engineer brought on duty 9:40 A. M., returns from helper trip and released 4:05 P. M.; again called for 5:10 P. M. and call annulled at 6:20 P. M.?

Answer: Allow minimum of 100 miles and overtime at $\frac{3}{16}$ ths daily rate, computed from 9:40 A. M., until final release, 6:20 P. M.

Question: (d) Engineer brought on duty for initial service 7:10 P. M., performs service repairing engine and proceeds to point in yard, and call annulled 9:05 P. M. Again brought on duty 1:30 A. M., departs 2:30 A. M. in helper service, returns and released 10:35 A. M.?

(Plaintiff's Exhibit No. 1 continued)

Answer: Engineer having performed service on first call his helper day begins at 7:10 P. M., and having departed terminal on second call before expiration of 8-hour helper day, beginning at 7:10 P. M., should be allowed minimum of 100 miles, and overtime at 3/16ths daily rate, computed from 7:10 P. M. until released 10:35 A. M.

Question: (e) Engineer called for certain time, and after coming on duty and without being released, time of departure is set back say two hours?

Answer: Time of trip should be computed from time reported for duty on first call.

Question: (f) Assigned helper engineer on duty, home terminal of helper assignment, 12:50 P. M.; performs helper service, arriving at district terminal 7:25 P. M.; later called to deadhead from district terminal to home terminal of helper assignment, departing district terminal deadhead 9:00 P. M. How should he be compensated?

Answer: Deadhead movement from district terminal starting after expiration of 8-hour helper day should be paid for under Article 28, applying to deadhead service; however, if deadhead had begun before expiration of 8-hour period, same would have been paid as part of first 8-hour helper day under combination rule, Article 4, Section 3.

Question: (g) Assigned helper engineer performs helper service and on returning to helper terminal tied up for rest prior to expiration of 8-hour helper day. How should he be compensated?

(Plaintiff's Exhibit No. 1 continued)

Answer: If such engineer is not needed for further service before expiration of 8-hour helper day, should be allowed a minimum day; however, if required for further service before expiration of first 8-hour helper day, and not available, account marking rest, should be paid only for actual time worked, miles or hours, whichever greater.

Question: (h) Engineers assigned to helper service called at their helper terminal in their order, first-in first-out, for initial service, as follows:

"A" 9:00 A. M.

"B" 10:30 A. M.

"C" 1:10 P. M.

All three engineers make trips in helper service and return to helper terminal. Call is placed for helper engineer for 4:10 P. M., and "C" is used. Is "A" entitled to runaround account not used on the 4:10 P. M. trip?

Answer: No; these engineers were called in turn for initial service and Company is privileged to use them as best suits the requirements of the service during the eight-hour helper day.

Sec. 2. (a) Engineers assigned to helper service exclusively when used for any service other than assignment, will be paid not less than 100 miles for each time so used, according to the rates and rules governing such service. Actual time in other service to be excluded in computing overtime in assigned service.

(Plaintiff's Exhibit No. 1 continued)

(b) When engineers in assigned helper service are required to couple in and assist trains on account of road engine being disabled such work should be included in their regular helper assignment.

(c) If an engine is broken down and has to be cut out of train, or in case trains tie up under the law, assigned helper engineer used to handle such trains, would be considered outside of regular helper work.

Sec. 3: Engineers assigned to helper service exclusively shall be allowed 100 miles at the rate applying to locomotive last used for each date on which no service is begun, excepting where engineer asks for rest, the hours extending to 12 o'clock midnight, the call time to be included.

Question: Engineer called off extra board and deadheaded 8:30 A. M. to home terminal of helper assignment to fill vacancy in helper service during life of bulletin. Arrived helper terminal 11:30 A. M. and placed on helper board. Performed no service that date. How should he be compensated?

Answer: Should be paid for the deadhead service as per Article 28. If this compensation does not equal minimum of 100 miles, as specified in Section 3, this Article, the difference should be made up.

Question: When an engineer is sent to relieve an engineer assigned to helper service at an out-

(Plaintiff's Exhibit No. 1 continued)

side point, what position should he take on helper board?

Answer: Relieving engineer shall be placed in space of assigned engineer laying off as soon as he is available. If such space has reached first out position before engineer is available for call, the space shall be maintained in first out position and the relieving engineer placed thereon as soon as available.

Sec. 4. Other engineers will not be used in helper service until all regularly assigned helper engineers who are available have been used, it being understood that this will not apply to regular assigned helper engineers from other helper stations or road engineers doubleheading through helper stations.

Sec. 5. Engineers assigned to helper service exclusively will be compensated for actual time consumed in initial or terminal switching per Article 15. This does not apply where helper engineer handles cars in cutting helper engine in or out of train, as this is a part of helper service.

It is further understood that helper engineers will not be used in switching service when road engineers are available.

Work Train Service.

ARTICLE 8.

Section 1. Engineers in work train service shall be paid through freight rates as specified in Sec-

(Plaintiff's Exhibit No. 1 continued)

tion 2, Article 2 and Section 3, Article 2. One hundred miles or less, or eight hours or less, will constitute a day; over 100 miles pro rata. On runs of 100 miles or less, overtime will begin at the expiration of eight hours; on runs of over 100 miles overtime will begin when the time on duty exceeds the miles run divided by $12\frac{1}{2}$. Overtime shall be paid for on the minute basis, at an hourly rate of three-sixteenths of the daily rate, according to class of engine or other power used. Time to begin when required to report for duty and to end when released at terminal or tie-up point.

Sec. 2. Engineers performing service enumerated will be paid miles or hours, whichever is the greater, in addition to work train day;

(a) Handles light engine or engine and caboose from district terminal to outside point and goes into work train service, or handles light engine or engine and caboose from outside point to district terminal on discontinuance of work train.

(b) Handles light engine or engine and caboose on completion of work train day from outside point to district terminal or other point for fuel, water, repairs, or other necessary attention to engine.

(c) Handles light engine or engine and caboose from district terminal or other point after having been fueled, watered, repaired, or given

(Plaintiff's Exhibit No. 1 continued)

other necessary attention, or handles engine to take the place of work train engine to point where work train service begins.

Sec. 3. (a) Should work train engineer perform any service out of terminal after being released as specified in Section 1, this Article, he shall begin a new day; time and mileage for subsequent service to be computed independently in accordance with the rules for class of service performed.

(b) When engineer is deadheaded to tie-up point of work train to fill vacancy on same and, or, on completion of day's work deadheads from tie-up point of work train to district terminal; he will be allowed deadhead mileage in accordance with Article 28, in addition to time allowed in work train service.

(c) An engineer laying off and reporting for duty, or an engineer making displacement, will, on his request, be advised where work train is to tie up on completion of day's work and will be permitted to assume duty at such tie-up point, provided the tie-up point can be determined sufficiently in advance.

Sec. 4. (a) On long haul work trains of 100 miles or over, in the aggregate, or work train is run over entire through freight district, engineer shall be paid full freight rates.

(b) When engineers who are assigned to reg-

(Plaintiff's Exhibit No. 1 continued)

ular runs or pooled service are used in work train service, they shall be paid full freight rates.

Sec. 5. Engineers held for work train service shall be allowed 100 miles at the minimum freight rate of the district for each day on which no service is begun. Sundays excepted when at Division terminals, or at bulletined tie-up points.

Sec. 6. In all cases where full freight rates are mentioned, final terminal delays, overtime and mileage rates of a freight train shall apply.

Sec. 7. Engineers in work train service will be run to a station where a place to eat and sleep at off shifts can be had, excepting where the railroad furnishes accommodations.

Sec. 8. The bulletined tie-up point of engineers assigned to work train service will not be changed unless the work has progressed sufficiently to warrant a change, and such new bulletined tie-up point must be in excess of 25 miles from former bulletined tie-up point.

It is understood that where bulletined tie-up point is changed as above and the service required of the engineer is similar to that bid in by him, it will not be considered a new run, and will not be bulletined for seniority choice of engineers, and he will accept the provisions of Section 5, this Article, at such bulletined tie-up point. Bulletins changing tie-up points will read as follows:

"Effective Sunday (blank date), bulletined

(Plaintiff's Exhibit No. 1 continued)

tie-up point for work train held by Engineer (blank) will be (blank) instead of (blank)."

Sec. 9. In construction of new lines forming a part of the Southern Pacific, Pacific Lines, engineers on the seniority district of that part of a line where the new line diverges, will be given the right to bid for service in the Construction Department under the seniority rules governing. If no application is received the youngest engineer on the working list of that district will be assigned. The men assigned to such service will be compensated as to rates of pay and hours of service in accordance with agreement provisions. The working rules and conditions of the Construction Department will obtain.

Wrecking Service.

ARTICLE 81½.

Engineers in wrecking service shall be paid through freight rates as specified in Section 2, Article 2 and Section 3, Article 2. One hundred miles or less, or eight hours or less, will constitute a day; over 100 miles pro rata. On runs of 100 miles or less, overtime will begin at the expiration of eight hours; on runs of over 100 miles, overtime will begin when the time on duty exceeds the miles run divided by 12½. Overtime shall be paid for on the minute basis, at an hourly rate of three-

(Plaintiff's Exhibit No. 1 continued)

sixteenths of the daily rate, according to class of engine or other power used. Time to be computed continuously from time required to report for duty at terminal until engineer reaches terminal, unless tied up under the law.

Question: How shall engineers be called for wrecking service?

Answer: When call is placed for wrecking outfit, engineer standing first out and entitled to the work shall be called, except in cases where main track is blocked and to call engineer standing first out would delay wrecker beyond time members of wrecking crew are ready to proceed; in such case, the Company will be privileged to use engineers who can be secured with the least possible delay, without runaround penalty.

Snow Plow Service.**ARTICLE 9.**

Engineers used in rotary snow plow service and engineers on engines pushing rotary or wedge plows, or in flanging service, shall be paid freight rate as per class of engine and district, eight hours or less, 100 miles or less, constitute a day. On runs of 100 miles or less, overtime will begin at the expiration of 8 hours. On runs of over 100 miles, overtime will begin when the time on duty exceeds the miles run, divided by $12\frac{1}{2}$. Overtime shall be paid for on minute basis at an hourly rate of

(Plaintiff's Exhibit No. 1 continued)

3/16ths of the daily rate, according to class of engine or other power used. If used out of tie-up point or terminal after expiration of 8 hours, will begin a new day.

Note: It is understood that engineers operating rotary will be paid same rate as engineer pushing rotary.

Fire Train Service—Sacramento Division.

ARTICLE 9½.

Section 1. Engineers assigned to fire train service shall be paid through freight rates per day provided in Article 2, Section 3.

Sec. 2. Working hours will be from 6:00 A. M. to 2:00 P. M. The fireman watching the engine from 6:00 A. M. to 12:00 noon; the engineer watching engine from 12:00 noon to 6:00 P. M. without regard to compensation defined in Section 4.

Sec. 3. Overtime shall be paid for on the minute basis, at an hourly rate of three-sixteenths of the daily rate, according to class of engine or other power used.

Sec. 4. Service other than fire train service performed between the east and west mile board of the station designated in bulletin of assignment as the home terminal of the fire train crew, will be computed separately on the minute basis, with a minimum of one hour, and paid for at one-eighth of the daily rate, such allowance to be made in

(Plaintiff's Exhibit No. 1 continued)

addition to compensation provided for fire train service.

Sec. 5. When used beyond the mile boards, in other than fire train service, engineer will be compensated for the service performed at the rate and under the rules governing. Such allowances to be made in addition to compensation provided for fire-train service.

Sec. 6. Engineers in fire train service used in flanger service will be paid for same in addition to compensation for fire train service.

Sec. 7. Engineers in fire train service called for such service before 6:00 A. M. or after 2:00 P. M. will be paid for such on overtime basis at three-sixteenths of the daily rate.

Sec. 8. An engineer assigned to fire train service and required to watch his engine between the hours of 6 P. M. and 10 A. M. shall be paid for the time consumed on the minute basis, at one-eighth of the daily rate, with a minimum of one hour, same to be allowed in addition to compensation for fire train service.

Sec. 9. Engineers assigned to fire train service will be granted two days off per month with pay, provided that a full month's service has been rendered in the preceding month; for example: If engineer works the full month of June he will be given two days off in July with pay.

Sec. 10. Engineers assigned to fire train ser-

(Plaintiff's Exhibit No. 1 continued)

vice who are required to perform work train service or make movements from fire train terminal to another point and return for purpose of securing water, fuel or other supplies used for commercial purposes or for use of contractors, or to replenish supplies used by such contractors, will be considered as performing service not a part of fire train assignment, and a minimum of 100 miles will be allowed. This will not set aside or modify provisions of Section 4, or Definition No. 2, this Article.

Engineers assigned to fire train service, who run their engines to some point for purpose of having engines given necessary attention and return with same engines or other engines for fire train use, will be considered as performing fire train service and compensated accordingly.

Engineers assigned to fire train service who are required to make movement to some point to replenish oil, water, or other necessary supplies, except as provided by Paragraph 1, will be considered as performing fire train service and compensated accordingly.

Engineers who handle fire train engine, or engine with fire train equipment and/or caboose from fire train terminal to district terminal on discontinuance of fire train service, or from district terminal to fire train terminal on inauguration of fire train service, will be paid miles or hours, whichever is the greater, for such movements, in addition to fire

(Plaintiff's Exhibit No. 1 continued)

train day, provided, however, if such movement is started before or after fire train working hours, a minimum of 100 miles will be allowed.

Definition of fire train service:

1. Going to and returning from fire.
2. Time consumed at fire.

Note: In connection with definition No. 2, it is understood whatever duties have been performed in the past at fire and paid for as fire train service will govern in the future.

3. Sprinkling sheds.
4. Supplying quarters used by fire train crews with water.
5. Supplying section quarters at Andover, Tamarack and Spruce with water.

6. Supplying locomotives with water when engines run short of water account of mechanical defects, derailments, wrecks, track obstructions, defects or shortage in station supply tanks occurring after crews depart from terminal.

Note: The fact Article 91½ (Fire Train Service) provides compensation and rules governing work performed at terminals, provisions of Section 7, Article 8, will not apply to this service.

(Plaintiff's Exhibit No. 1 continued)

Arbitrary Rates.**ARTICLE 10.**

In Oakland, Berkeley and Alameda Mole Suburban local passenger service in arbitrary rate of \$7.04 per day will be paid. Should steam service be substituted for electric service, an arbitrary rate of \$7.04 per day will be paid on engines with cylinders under 18 inches in diameter and \$7.17 per day on engines with cylinders 18 inches and over in diameter. Overtime at the rate of 86 cents per hour to be computed on the minute basis.

In Oswego Suburban local passenger service an arbitrary rate of \$6.81 per day will be paid on engines with cylinders under 18 inches in diameter and \$6.94 per day on engines with cylinders 18 inches and over in diameter. Overtime at the rate of 86 cents per hour to be computed on the minute basis.

Service as specified in this Article to be governed by the provisions of Article 6, Section 1 (a).

Switching Service.**ARTICLE 11.**

Section 1. The minimum rate of wages per day shall be:

(a) Rates of Pay.**Weight on Drivers**

| | |
|-------------------------------|--------|
| Less than 140,000 lbs. | \$7.16 |
| 140,000 to 200,000 lbs. | 7.33 |
| 200,000 to 300,000 lbs. | 7.50 |
| 300,000 lbs. and over | 7.67 |
| Mallets under 275,000 lbs. | 8.31 |
| Mallets 275,000 lbs. and over | 8.56 |

(Plaintiff's Exhibit No. 1 continued)

(b) Eight hours or less shall constitute a day's work, overtime to be paid on minute basis at one and one-half times the hourly rate, according to class of engine. Time to begin when required to report for duty and to end at time engine is placed on designated track or engineer is released. Where engineers are required to register on and off duty, the time required to perform such service shall be construed to mean time on duty.

(c) Except when changing off where it is the practice to work alternately days and nights for certain periods, working through two shifts to change off; or where exercising seniority rights from one assignment to another; or when extra men are required by schedule rules to be used, all time worked in excess of 8 hours continuous service in a twenty-four hour period shall be paid for as overtime, on the minute basis at one and one-half times the hourly rate, according to class of engine.

Should engineer be held on duty account failure of relief engineer to report at time specified, he will be paid on basis of time and one-half overtime until relieved from duty.

If engineer is held on duty beyond regular hours of assignment account of Company not furnishing relief, he will be paid a minimum of eight hours at time and one-half.

Note: An engineer sent to an outside point where extra list is not maintained to relieve man

(Plaintiff's Exhibit No. 1 continued)

holding regular assignment in yard service, and during period relieving regular assigned man is used on second shift within a twenty-four hour period, will be allowed time and one-half for service on second shift.

Question 90, Int. No. 1, Supplement No. 24:

What compensation should be allowed for additional service where a crew is regularly assigned to work 12 Midnight to 8 A. M. and (service performed not affected by exceptions outlined in this rule):

(a) Is required to cover the third shift on the same day—4 P. M. to 12 Midnight?

(b) Is required in an emergency to work 8:30 A. M. until 11:30 A. M.?

(c) Is required in an emergency to work 8 P. M. to 12 Midnight (4 hours) on the same day?

(d) Is given 48 hours' notice and assignment is moved up an hour, starting at 11:00 P. M. and being relieved at 7 A. M., and consequently in the 24-hour period works 9 hours, but not more than 8 hours on a shift?

Decision: (a) Eight hours at time and one-half. (b) Eight hours at time and one-half. (c) Eight hours at time and one-half. (d) On account of complying with the 48-hour provision, which makes it permissible to change beginning time, crews only entitled to a minimum day.

(Plaintiff's Exhibit No. 1 continued)

Question 91, Int. No. 1, Supplement No. 24:

An extra man is worked on two 8-hour shifts within the same 24-hour period, or on one 8-hour shift and is started on another shift in the same 24-hour period that spreads into the next 24-hour period. How shall he be paid for such service?

Decision: It should be understood that under that portion of Section 1 (c) applying to extra men when required to remain on duty in excess of eight hours in continuous service they will receive overtime at time and one-half on the minute basis. When they start a second trick within a 24-hour period, they will not be paid under the overtime rule, but will start a new day regardless of present rules and will receive for eight hours or less straight time rates. The intent of this is not to deprive extra men of extra work, which would result if time and one-half had to be paid for the second shift.

Question 92, Int. No. 1, Supplement No. 24:

What compensation should be allowed an extra man who is called and at 4 A. M. relieves a regular man, who is covering an assignment 12 Midnight to 8 A. M. and the assignment works until 9 A. M.?

Regular engineer working four hours?

Extra engineer working five hours?

Remainder of crew working nine hours?

Decision: Extra man will receive a minimum day only.

(Plaintiff's Exhibit No. 1 continued)

—Question 94, Int. No. 1, Supplement No. 24:

If a yard crew was assigned for 10 hours and for some reason was relieved at the expiration of 8 hours, what number of hours is to be allowed?

Decision: A minimum of 8 hours. Assignments should be for 8 hours and time worked in excess thereof should be paid as overtime.

(d) Engineers shall be assigned for a fixed period of time which shall be for the same hours daily for all regular members of a crew.

(e) Engineers will be allowed 20 minutes for lunch between 4½ and 6 hours after starting work without deduction of pay.

Yard engineers will not be required to work longer than 6 hours without being allowed 20 minutes for lunch, with no deduction in pay or time therefor.

Note: Engineer is not relieved of care of engine during lunch period.

Calculating Assignment and Meal Periods.

(f) The time for fixing the beginning of assignments or meal periods is to be calculated from the time fixed for the crew to begin work as a unit without regard to preparatory or individual duties.

(g) Regularly assigned yard engineers shall each have a fixed starting time and the starting time of an engineer will not be changed without at least 48 hours' advance notice. Practices as to handling of transfer crews are not affected by this section.

(Plaintiff's Exhibit No. 1 continued)

(h) Where three eight-hour shifts are worked in continuous service, the time for the first shift to begin work will be between 6:30 A. M. and 8:00 A. M.; the second 2:30 P. M. and 4:00 P. M.; and the third 10:30 P. M. and 12:00 midnight.

(i) Where two shifts are worked in continuous service, the first shift may be started during any one of the periods named in Par. (h).

(j) Where two shifts are worked not in continuous service, the time for the first shift to begin work will be between the hours of 6:30 A. M. and 10:00 A. M., and the second not later than 10:30 P. M.

(k) Where an independent assignment is worked regularly or at points where only one yard crew is regularly employed, they can be started at any time, subject to Par. (g).

Question 95, Int. No. 1, Supplement No. 24:

Should it be understood that paragraph (k) applies only to regular assignments, with no change in present practice for starting extra yard crews?

Decision: Yes.

(1) A designated point will be established for engineers coming on and going off duty, and before such points are changed fortyeight hours advance notice will be given. Extra engineers will be notified when called the point at which required to report for duty.

(m) The point for going on and off duty will be governed by local conditions. In certain localities

(Plaintiff's Exhibit No. 1. continued)

instructions will provide that engineers will report at the hump, others report at yard office, others at engine houses or ready tracks. It is not considered that the place to report will be confined to any definite number of feet, but the designation will indicate a definite and recognized location.

(n) The foregoing paragraphs will also apply to engineers called or used in extra yard service.

Sec. 2. All new or vacant assignments, or when the starting time of any assignment is changed two hours or more, shall be bulletined for seniority choice of engineers in accordance with Section 10, Article 32. Bulletins to show time and place engineers shall report for duty.

Sec. 3. Where regularly assigned to perform service within switching limits, yard engineers shall not be used in road service when road engineers are available, except in case of emergency. When yard crews are used in road service under conditions just referred to, engineers shall be paid miles or hours, whichever is the greater, with a minimum of one hour, for the class of service performed, in addition to the regular yard pay and without any deduction therefrom for the time consumed in said service.

Sec. 4. When engineers who are assigned to regular runs, extra passenger lists, or pooled service, are used in yard service, they shall be paid full freight rates. This includes extra engineers while

(Plaintiff's Exhibit No. 1 continued)

in pooled freight service for filling the place of regular road engineers.

Sec. 5. Engineers in boat transfer service at Port Costa and Benicia will be paid \$7.48 per day, switching hours of service to apply. Time and one-half for overtime.

Sec. 6. Engineers assigned to haul freight between San Francisco and Bay Shore will be paid through freight rates, and through freight rules as to mileage and overtime will apply.

Sec. 7. (a) When an engineer who is regularly assigned to switching service is used during the course of his duty to perform maintenance of way work within yard limits, such engineer will be paid for the entire day's work at regular yard rates.

(b) In cases where an extra engineer is called and used to perform a combination of yard and maintenance of way work within yard limits, work train rates will apply for the day's service.

Guarantee.

(c) Yard assignments will not be canceled unless it is known in advance that same will be discontinued for a period of three calendar days or more.

Where assignments are thus canceled, engineers relinquish rights thereto and will be privileged to make displacement under rules in effect. Yard assignments canceled under these conditions and later restored, will be bulletined for seniority choice under rules governing.

(Plaintiff's Exhibit No. 1 continued)

Engineers regularly assigned to shift in yard service, who are ready for service and do not lay off of their own accord, will be guaranteed not less than six days per week. If engineers, assigned seven days per week in yard service, do not work the following holidays (or the day preceding or following such holidays) New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas, the day not worked shall be deducted. In computing weekly guarantee, the week will begin on Monday, on seven day assignments, and on day following regular layover day on six day assignments:

In making up guarantee, time so allowed will be paid at rate applying on the locomotive on which last used.

In cases where an extra engineer is sent to an outside point, where extra list is not maintained, to fill vacancy on regular assignment in yard service, guarantee will apply to such extra engineer during period he is filling such vacancy. However, at points where extra list is maintained and vacancy is being filled from such extra list, as per Section 3 (a) of Article 30, holiday or other day not worked during period extra men filling vacancy would not be paid.

Examples.

Example 1. Regular assigned engineer, six day assignment, lays off Monday, Tuesday and Wednes-

(Plaintiff's Exhibit No. 1 continued)

day. Thursday, July 4th, holiday, assignment not worked. Reports 4th and works Friday and Saturday. Under this example will not be paid for 4th.

Example 2. Regular assigned engineer, six day assignment, lays off Saturday. Monday, holiday, assignment not worked. Reports for work Monday and works Tuesday to Saturday inclusive. Would not receive pay for holiday.

Example 3. Regular assigned engineer, six day assignment, works Monday. For some reason, assignment does not work Tuesday (not a holiday). Works Wednesday, Thursday and Friday, and works two shifts on Saturday, or some other previous day in that week. Extra day made doubling will be used to offset day lost.

Example 4. Regular assigned engineer, six day assignment, works Monday. No service performed Tuesday, assignment not worked. Displaced Wednesday. Will receive one day for Tuesday. However, if regular man doubled Monday or man relieving him should double during balance of week, man displaced will not receive pay for day he did not work.

Example 5. Regular assigned engineer works Saturday, layover Sunday. For some reason, assignment does not work Monday. Displaced Tuesday by senior man. Will receive pay for Monday. However, if man making displacement should double during balance of week, extra day made in such double will offset day lost by man displaced.

(Plaintiff's Exhibit No. 1 continued)

Example 6. Regular assigned engineer, seven day assignment, works Monday, Tuesday and Wednesday. For some reason, assignment does not work Thursday (not a holiday). Works Friday, Saturday and Sunday. Will receive pay for Thursday. However, if assigned man should double on any day during that week, he would not be paid for day lost Thursday.

Example 7. Regular assigned engineer, seven day assignment, works Monday, Tuesday, July 4th, a holiday, assignment does not work. Lays off Wednesday. Reports and works Thursday, Friday and Saturday. For some reason, assignment not worked Sunday. Will receive pay for Sunday, or a total of five days for the week. However, if assigned man should double on any of the days worked during that week, he would not be paid for Sunday.

Note: Engineer deadheading before or after performing extra yard service will be paid for such deadhead under Article 28.

Belt Line and Transfer Service.

Sec. 8. Whenever such service is established a differential will be considered.

Shop Yard Service.

Sec. 9. (a) Effective October 1, 1919, employees (excluding locomotive crane operators and wrecking derrick engineers) who are assigned to and

(Plaintiff's Exhibit No. 1 continued)

operate shop yard engines, will be paid the yard rates of wages and operated under the yard service rules as are specified in Supplements Numbers 15 (Engineers and Firemen) and 16 (Yardmen) to General Order Number 27, and such service shall be incorporated into the respective agreements on all roads in Federal operation.

(b) This order is without prejudice to the seniority rights of employees who are now assigned to shop yard engines. Only as vacancies occur and new positions are created they will be filled from the seniority rosters of the Engineers, Firemen and Yardmen.

(c) Rates of wages that are higher or rules for overtime that are more favorable to the employees than those hereby established, shall be preserved.

(d) The provisions of Section 7 (c), this Article (guarantee) will apply to engineers assigned to shop yard service.

Guaranteed Full Time Per Week.

ARTICLE 12.

Section 1. When, from any cause, more engineers are assigned to a certain run than can (per actual mileage of said run) make full time at the standard pay for service and division on which such runs occur, mileage in excess of actual miles run will be allowed sufficient to give such engineers full time. Full time as herein referred to shall be understood to mean 100 miles at the stand-

(Plaintiff's Exhibit No. 1 continued)

ard rate for the district and service for each engineer assigned to the run for each day per week that the train or trains are scheduled to run, but in no case under the provisions of this Article shall an engineer receive less than full pay for six days per week, provided engineer is available for service on assigned or other runs. This Article shall in no way apply to runs, the daily number of trains composing which are uncertain.

Sec. 2. In making up the weekly guarantee of engineers, the mileage so allowed will be paid at the rate applying on the locomotive on which last used.

Sec. 3. In case engineer assigned to straight-away local freight service, or a series of branch freight runs, established main line turnaround local freight service as specified in Article 6, Section 6, or roustabout service as specified in Article 19, lays off, the sum of the payments to the regular man and extra man, or men relieving him, exclusive of overtime, will equal the weekly guarantee.

Sec. 4. In computing guarantee for engineers having layover day, the day following such layover day will be regarded as the first day of the week. Engineers not having layover day, Monday will be considered the first day of the week.

Sec. 5. Local freight assignments will not be canceled unless it is known in advance that run will be discontinued for a period of three (3) days or more. However, in case of restoring run where

(Plaintiff's Exhibit No. 1 continued)

assignment, territory or service is changed, it will be considered a new run and this section will not apply; neither will this section restrict the use of assigned local freight engineers in other service on dates their runs do not operate.

Note: The above will be construed as not changing present practice insofar as using engineers out of terminals to make up/guarantee where pooled engineers are maintained.

Question: In case engineer not used on assignment account insufficient rest, how should he be compensated for time lost?

Answer: In case engineer not used on assignment account not available under Hours of Service Law, he will be compensated full mileage of his assignment; where not available by reason of marking ~~rest~~, he will not be compensated for time lost.

What Constitutes a Trip.

ARTICLE 13.

Section 1. An engineer is understood to have reached the terminal of a trip when he reaches the division terminal at which engine crews are usually changed, or arrives at the established terminal of his train, as shown by assignment, and having done so and proceeding further with the same train, or being sent out on another trip or train, he is, in either case, understood to have begun another trip.

The points shown below constitute all division

(Plaintiff's Exhibit No. 1 continued)

terminals at which engine crews are usually changed as defined by this Section:

| | | |
|---------------|-----------------|---------------|
| El Paso | Tracy | Laws |
| Lordsburg | San Francisco | Keeler |
| Nogales | Watsonville | Susanville |
| Tucson | Junction | Gerber |
| Gila | San Luis Obispo | Dunsmuir |
| Phoenix | San Jose | Ashland |
| Yuma | (Western Div.) | Klamath Falls |
| Globe | Oakland | Alturas |
| Indio | Roseville | Roseburg |
| Los Angeles | Sparks | Crescent Lake |
| Santa Barbara | Imlay | Eugene |
| Owenyo (San | Carlin | Portland |
| Joaquin Div.) | Montello | Tillamook |
| Bakersfield | Ogden | Yaquina |
| Fresno | Mina | Marshfield |

Sec. 2. Should it become necessary at any time for operating or other reasons to discontinue or create any main line terminals, changes in terminals will be considered as a proper reason for advertising such runs as are affected for seniority choice of engineers and bulletins will be posted and assignments made as provided in Article 32, Section 10. Other than main line terminals will not be established or maintained for pooled or extra men unless there is enough work for two or more crews between designated points.

Section 3. When track obstructions occur, such as snow blockades, slides, washouts, tunnel trouble, or similar conditions which make it impossible to maintain service from terminal to terminal, tempo-

(Plaintiff's Exhibit No. 1 continued)

rary terminals may be established by bulletin notice, specifying the points to be established as temporary terminals, runs and service affected, time effective to be at 12:01 A. M. of date following date of bulletin. If conditions are remedied and line opened within forty-eight hours from time bulletin becomes effective, bulletin will be considered void and engineers compensated same as if bulletin had not been issued. When temporary terminals are thus created, it is understood that agreement provisions applying to terminals shall apply at the temporary terminal.

Overtime and When Paid.

ARTICLE 14.

Section 1. An engineer in passenger service making a trip between terminals, exceeding 100 miles, the schedule time between such terminals shall be the limit of a trip, or the average schedule of all passenger trains running in the same direction between such terminals, shall be the limit of a trip for irregular passenger trains. On runs of 100 miles or less, five hours shall be the limit of a trip except as provided in Section 1, Article 6.

When, from any cause, time consumed on any trip exceeds the limits as specified in this section, the engineer shall be paid for all time thus consumed at the rate of 12½ miles per hour.

(Plaintiff's Exhibit No. 1 continued)

Sec. 2. An engineer in freight service making a trip between terminals, 100 miles or less, overtime will begin at the expiration of eight hours; on runs of over 100 miles overtime will begin when the time on duty exceeds the miles run divided by $12\frac{1}{2}$. If actual miles exceed these limits, actual miles will be allowed. Overtime shall be paid for on the minute basis, at an hourly rate of three-sixteenths of the daily rate, according to class of engine or other power used.

Sec. 3. Engineers leaving terminals in road service and used in work train service en route are not subject to work train rules.

When engineers en route are used in work train or snow plow service on account of floods, wash-outs, snowstorms, slides or other unusual conditions, or engineers en route delayed by such conditions, time to be computed as follows:

Continuous time, less time tied up under the law, will be allowed for first 24 hours computed from time required to report for duty. For first 16 hours of each subsequent 24-hour period delayed, engineers will be allowed 200 miles. Should miles run exceed 200, or hours on duty exceed 16 in any 24-hour period, actual miles or hours will be allowed. If trip is resumed during first 16 hours of any 24-hour period held, time will be computed continuously from end of previous 24-hour period, provided that if overtime accrues on the trip, that portion of the overtime due to starting pay at the

(Plaintiff's Exhibit No. 1 continued)

expiration of any 24-hour period shall be paid for at the pro rata rate in order that time and one-half for overtime will not be so applied as to increase the rates paid for time computed continuously from end of previous 24-hour period.

It is understood under this rule that the first 200 miles allowed on each 24-hour period will apply on the guarantee as provided in Article 12.

Sec. 4. Engineers handling Southern Pacific Officers' Specials, Annual Inspection trains, examination car, circus or carnival trains, valuation specials, motion picture trains or test trains, may be tied up at other than established division terminals, and time so tied up deducted, provided a minimum of 150 miles, including overtime at road rates, will be allowed for each day engaged in or held for such service and not tied up at terminals. It is understood that delays of less than eight hours at any point other than terminals will not be considered as being tied up, and time so delayed will not be deducted in computing time for road trip of that day. Where trip in such service is made from terminal to terminal, this rule does not apply.

Engineers en route to point where such service begins, or returning to their assigned territory after being relieved from such service, will be paid under this rule.

Test trains as referred to in this Article will be classified as follows:

(Plaintiff's Exhibit No. 1 continued)

- (1) Testing.....Air Brakes
- (2) Testing.....Capacity of Locomotives
- (3) Testing.....Automatic train control.
- (4) Testing.....Automatic block signals

Switching and spotting of circus train equipment and overtime of road trip will be included in arriving at minimum of 150 miles, except at terminals where yard crews are on duty, engineers will receive initial and terminal switching if required to perform switching and spotting of circus at such point.

If engineer runs, for example, twenty miles, picks up circus train, or vice versa, such light movement will be included in regular circus train day.

Engineers handling circus trains will not be run through established division terminals when other engineers are available. If run through, they will start a new day.

Engineer handling circus train will be paid through freight rates according to class of engine and district on which used.

Sec. 5. In assigned passenger service, on a trip of over 100 miles, where two or more train numbers are used on one trip, engineers will be paid overtime on the basis of the combined schedules, plus the dead time shown on time table where train numbers change; provided, that not more than 45 minutes dead time at point where train numbers change shall be added to the combined schedules of the trains. Where the dead time at any point

(Plaintiff's Exhibit No. 1 continued)

where train numbers change is in excess of five hours, terminal provisions will prevail and engineers will be considered as beginning a new trip.

Sec. 6. Engineer's time shall be continuous between terminals, unless tied up under the provisions of the law limiting the hours of service, and when so relieved will, if possible, be tied up where accommodations can be had. If the engineer watches engine, he will be paid for such time at the rate of $12\frac{1}{2}$ miles per hour.

Sec. 7. In computing overtime on a trip, exceeding 100 miles, actual time table mileage only will be counted; on a trip of 100 miles or less, time table schedules will not be considered.

Initial and Terminal Switching and Delays.

ARTICLE 15.

Section 1. Engineers in passenger service making a trip between terminals, exceeding 100 miles, required to do initial or terminal switching, or delayed at initial station from any cause, shall be paid for all time so consumed at one-eighth of the daily rate per hour, applying to class of engine, service and district, on the minute basis; such switching and delay to be computed separately from road overtime and paid for irrespective of time consumed on the road. This time not to be counted in computing road overtime.

Sec. 2. (a) An engineer in passenger service making a trip between terminals, exceeding 100

(Plaintiff's Exhibit No. 1 continued)

miles, initial delays to be computed from time engineer is ordered to leave with train from passenger depot track on which train is made up and to end with departure of train from passenger depot track on which train is made up at initial point.

(b) For passenger service, final terminal delay shall be computed from time train reaches terminal station. If road overtime has commenced, initial and terminal delays or initial and terminal switching shall not apply and road overtime will be paid to point of final relief.

Sec. 3. Engineers in passenger service making a trip between terminals, 100 miles or less, and required to do initial or terminal switching, will be paid for all time so consumed at one-eighth of the daily rate per hour, applying to class of engine and district, on the minute basis. This time not to be counted in computing road overtime.

Sec. 4. (a) When an engineer in turnaround passenger service, either regular or irregular, is required to do initial, terminal or turning point switching, he shall be paid for all time so consumed at one-eighth of the daily rate per hour applying to class of engine and district on the minute basis. This time not to be counted in computing road overtime.

(b) Final terminal delay in passenger or freight service, after the lapse of thirty minutes, will be paid for the full delay at the end of the trip, at one-eighth of the daily rate per hour on the minute

(Plaintiff's Exhibit No. 1 continued)

basis, applying to the class of engine, service and district. However, in freight service, if train is not on overtime on arrival at final terminal, but the overtime period commences before final release, payments accruing at the final terminal up to the period when overtime commences will be allowed at one-eighth of the daily rate, but time thereafter shall be paid on the actual minute basis at an hourly rate of three-sixteenths of the daily rate, according to class of engine or other power used. If road overtime has commenced, terminal delay, initial and terminal switching shall not apply and road overtime will be paid to point of final relief.

Freight Service.

Example—

Required to report at A..... 7:00 A. M.

Leave A 7:15 A. M. and run to B
(100 miles).

Arrive B 2:00 P. M.

Delayed at final terminal 1 hour, 20
minutes.

Relieved at B 3:20 P. M.

Compensation—100 miles, plus one hour final delay at one-eighth of the daily rate for period until overtime commences, and for the time thereafter twenty minutes final delay at three-sixteenths of the daily rate per hour.

(Plaintiff's Exhibit No. 1 continued)

Sec. 5. Engineers in freight service making a trip between terminals required to do initial or terminal switching shall be paid for all time so consumed at one-eighth of the daily rate per hour, applying to class of engine, service and district on the minute basis; such time to be computed separately from road overtime and paid for irrespective of time consumed on the road. This time not to be counted in computing road overtime; except that when the number of hours switching is not equal in money value to the sum of the money values of switching hours and road overtime hours, switching time shall not be paid for and the road overtime shall be calculated and paid for the same as if switching had not occurred.

In calculating the time engaged in switching, time will be continuous from time work is begun until it is completed and train is coupled together, except in cases where train is made up on two tracks and not coupled together account insufficient track room to clear other trains, the time between the time switching is completed and train is coupled together will not be calculated as initial switching.

Engineer, after arrival at final terminal, inducted into terminal switching will be compensated under terminal switching rules of agreement from time terminal switching commenced until engine is placed on designated relieving track or engineer is relieved at terminal.

(Plaintiff's Exhibit No. 1 continued)

When road engineers entitled under agreement provisions to initial and terminal switching are required, before departing initial terminal or after arrival at final terminal of run, to spot cars of gravel or other maintenance of way material for loading or unloading, in connection with other terminal switching, such service will be compensated for under initial and terminal switching rules of agreement.

Engineer required to perform six hours or more initial switching will be allowed 30 minutes to eat at the initial terminal, computed as part of the initial switching time. In cases where on arrival terminal engineer has been on duty six hours without eating and there is in excess of one hour terminal switching to be performed, he will be allowed 30 minutes to eat computed as part of the terminal switching time.

Example No. 1—

| | |
|---|------------|
| Required to report at A..... | 7:00 A. M. |
| Switches at A until..... | 7:30 A. M. |
| Leaves A | 7:30 A. M. |
| Runs A to B a distance of less than 100 miles. | |
| Arrives at B..... | 1:30 P. M. |
| Switches at B until..... | 2:00 P. M. |

Compensation—100 miles, plus 30 minutes initial switching and 30 minutes terminal switching at one-eighth of the daily rate.

(Plaintiff's Exhibit No. 1 continued)

Example No. 2—

Required to report at A..... 7:00 A. M.

Switches at A until..... 9:00 A. M.

Leaves A at 9 A. M. and runs to B
(100 miles).

Relieved at B..... 5:00 P. M.

Compensation—100 miles, plus two hours overtime at three-sixteenths of the daily rate per hour. In this case the money value of the road overtime at three-sixteenths of the daily rate exceeds the allowance of two hour switching at one-eighth of the daily rate.

Example No. 3—

Required to report at A..... 7:00 A. M.

Switches at A until..... 9:00 A. M.

Leaves A at 9 A. M. and runs to B
(100 miles).

Relieved at B..... 4:00 P. M.

Compensation—100 miles, plus two hours switching at one-eighth of the daily rate; such allowance being greater than one hour overtime at one and one-half time.

(Plaintiff's Exhibit No. 1 continued)

Example No. 4—

Required to report at A 7:00 A. M.

Switches at A until 7:30 A. M.

Runs A to B (100 miles).

Arrives at B 4:30 P. M.

Switches at B one hour.

Relieved at B 5:30 P. M.

Compensation—100 miles, plus 30 minutes initial switching, one hour road overtime and one hour final terminal switching. All at three-sixteenths of the daily rate per hour.

Note: This on account of initial and terminal switching being absorbed by overtime.

Example No. 5—

Required to report at A 7:00 A. M.

Switches at A until 7:30 A. M.

Runs A to B (100 miles).

Arrives at B 2:30 P. M.

Switches at B 30 minutes.

Relieved at B 3:00 P. M.

Compensation—100 miles, plus 30 minutes initial switching and 30 minutes terminal switching at pro rata rate and not at time and one-half.

(Plaintiff's Exhibit No. 1 continued)

Example No. 6—

Required to report at A..... 7:00 A. M.

Switches at A until..... 7:45 A. M.

Runs A to B (100 miles).

Arrives at B..... 3:45 P. M.

Switches at B 45 minutes.

Relieved at B..... 4:30 P. M.

Compensation—100 miles, plus 45 minutes initial switching and 45 minutes terminal switching both at three-sixteenths of the daily rate per hour.

Example No. 7—

Required to report at A..... 7:00 A. M.

Switches at A until..... 7:30 A. M.

Runs A to B (100 miles).

Arrives at B..... 2:30 P. M.

Switching at B 1 hour, 30 minutes.

Relieved at B..... 4:00 P. M.

Compensation—100 miles, plus 30 minutes initial switching, and one hour 30 minutes terminal switching, both at pro rata hourly rate and not time and one-half rate.

Example No. 8—

Required to report at A..... 7:00 A. M.

Switches at A until..... 7:30 A. M.

Runs A to B (100 miles).

Arrives at B..... 3:00 P. M.

Relieved at B..... 3:10 P. M.

(Plaintiff's Exhibit No. 1 continued)

Compensation—100 miles, plus 30 minutes initial switching at pro rata hourly rate and not at time and one-half.

Example No. 9—

| | |
|------------------------------|------------|
| Required to report at A..... | 7:00 A. M. |
| Delayed at A..... | 7:20 A. M. |
| Runs A to B (100 miles). | |
| Arrives at B..... | 2:50 P. M. |
| Switches at B 10 minutes. | |
| Relieved at B..... | 3:00 P. M. |

Compensation—100 miles and 10 minutes terminal switching at pro rata hourly rate and not at time and one-half.

Example No. 10—

| | |
|------------------------------|------------|
| Required to report at A..... | 7:00 A. M. |
| Delayed at A..... | 7:20 A. M. |
| Runs A to B (100 miles). | |
| Arrives at B..... | 2:50 P. M. |
| Switches at B 50 mins. | |
| Relieved at B..... | 3:40 P. M. |

Compensation—100 miles and 40 minutes road overtime at three-sixteenths of the daily rate per hour. In this case, the money value of the road overtime at three-sixteenths of the daily rate exceeds the allowance of 50 minutes switching at pro rata rate.

(Plaintiff's Exhibit No. 1 continued)

Example No. 11—

| | |
|------------------------------|------------|
| Required to report at A..... | 7:00 A. M. |
| Switches at A..... | 7:20 A. M. |
| Runs A to B (100 miles). | |
| Arrives at B..... | 2:50 P. M. |
| Switches at B 50 mins. | |
| Relieved at B..... | 3:40 P. M. |

Compensation—100 miles, 20 minutes initial and 50 minutes terminal switching at pro rata rate and not at time and one-half. In this case, the allowance for switching at pro rata rate exceeds the money value of road overtime at three-sixteenths of the daily rate.

Sec. 6. For freight service, final terminal delay shall be computed from time the engine reaches designated main track switch connection with the yard track. When freight train on arrival at final terminal of run is required to come to stop before reaching designated switch from which terminal delay is computed on account of a preceding train standing between them and the designated switch, terminal delay will be computed from time train comes to stop behind the train that is blocking them.

Sec. 7. Where hostlers are not provided to take engines to and from train, engineers will be allowed not less than the actual mileage made between yard, depot and roundhouse. (Where distance is

(Plaintiff's Exhibit No. 1 continued)

one mile or over). This not to apply when engineer is on overtime as specified in Section 2. (b) this Article.

Rates of Pay for Light Engines and Pilots.

ARTICLE 16.

Section 1. When engines are run over the road light, engineers will be paid full freight rates, including allowed mileage as shown in Article 3, except when used in freight or passenger service over part of trip and balance run light, will be paid on the same basis as the crew which is helped. The overtime basis for the rate paid will apply for the entire trip.

Sec. 2. Engineers acting as pilots will be compensated per class of locomotive and service, the same as if handling the engine on which pilot service is performed.

1913 Mediation Settlement of Electrical Question.

ARTICLE 17.

Section 1. The Railroad concedes to the engineers the right to negotiate, maintain and protect, under the protective laws of their organization, without segregation of committees, schedules covering rates of pay, rules of seniority and working conditions governing engineers in both steam and electric service.

Sec. 2. Portions of the Pacific Lines in Alameda County and in Oregon that have been electrified,

(Plaintiff's Exhibit No. 1 continued)

and any portion of the Pacific Lines that may hereafter be electrified and any new lines constructed for operation in connection therewith, will not be segregated in so far as it affects the rights of engineers in either steam or electric service, or, of the system General Committees to legislate for and represent such employees, and the rates of pay and working conditions provided for in steam service shall apply, subject to agreement provision. None of the above to apply to street car service.

Sec. 3. Before an engineer in the exercise of his seniority rights is assigned to runs in the electric service from steam service, or vice versa, the Company shall have the right to establish and require such tests, and standard of efficiency, as it may deem necessary to satisfy itself of the competency of the engineer for the position desired in order to fully provide for the safety of operation of its trains. It is agreed that an engineer who has had experience in freight service only, going into electric service and remaining therein a number of years, desiring to exercise his seniority in fast steam passenger service, may be required to qualify by first going into steam freight or local passenger service, or both, on the same district for a reasonable period.

Award Supplement to General Order 27.

Sec. 4. Wherever electric or other power is installed as a substitute for steam, or is now oper-

(Plaintiff's Exhibit No. 1 continued)

ated as a part of their system on any of the tracks operated or controlled by any of the railroads, the locomotive engineers shall have preference for positions as engineers or motormen, and locomotive firemen for the positions as firemen or helpers on electric locomotives; but these rates shall not operate to displace any men holding such positions as of April 10, 1919.

Note: The inclusion of this Section (Article VI of Supplement No. 24) by the Company, was wholly account decision Case No. 27/425.

Local Freight and Mixed Service.

ARTICLE 18.

Section 1. Engineers handling four or more freight cars, in conjunction with overland passenger service, shall be paid full freight rates for the entire trip.

Sec. 2. Engineers handling two or more freight cars, in conjunction with branch or local passenger service, shall be paid full freight rates for the entire trip.

Sec. 3. Engineers handling one or more local freight cars, picking up and setting out or transferring freight to and from car en route, in conjunction with branch or local passenger service, shall be paid full freight rates for the entire trip.

Sec. 4. In addition to assigned local freight trains, engineers handling freight or mixed trains

(Plaintiff's Exhibit No. 1 continued)

on which 5,000 pounds, or over, L. C. L. freight, is loaded, or unloaded, per trip, or that does industrial or station switching between terminals, will be paid local freight rates.

Movements made in connection with loading or unloading, picking up or setting out cars for stock to be loaded or unloaded, or setting out and spotting cars from own train, and picking up cars into own train, and the respotting of cars disturbed as result of either of the above movements, is not industrial or station switching as mentioned in above paragraph of this Article.

Sec. 5. Where, under schedule rules or accepted practices, a part of the crew receives local freight rates, the engineer will receive not less than the local freight rate.

On districts where there is no local freight differential applying to conductors or trainmen, and an engineer in through freight service is required to perform switching at stations en route that would entitle train crew to local freight rates, were there a local freight differential, engineer will be allowed local freight rates.

Conductors and Trainmen's Local Freight Rule.

Crews in through or irregular freight service required to set out or pick up cars at more than four stations, to load or unload freight, to load or unload stock not handled in their train, to put up coal or do station switching between terminals of

(Plaintiff's Exhibit No. 1 continued)

their run, shall be allowed local freight rates of pay for the entire trip.

The following will not be considered local freight work under this rule: Setting out disabled cars; picking up or setting out water cars for train engine use only; unloading not to exceed 1000 lbs. perishable freight on the trip.

"Station Switching" is defined as placing cars at stations on industrial tracks when one or more switches have to be made to properly place cars set out or handled.

Refer to Article 18, Sec. 5, Engineers' Agreement.

Question: Engineer handling through freight train, picks up several cars at station en route, weighs them, after which these cars are taken into his train and handled to another station, where they are set out. Does the weighing of cars constitute "station switching" as specified in Article 18, Section 4?

Answer: No; cars having been handled in his own train, weighing of same does not constitute station or industrial switching.

Question: Engineer helps through freight train and during time being helped, train crew pick up and set out at three points. Subsequent to the extra helper being cut out, this train picked up and set out at two additional points, resulting in crew of train being allowed local freight rates. Is the extra helper engineer entitled to local freight rates?

(Plaintiff's Exhibit No. 1 continued)

Answer: No; during period this extra engineer was helping this train no service was performed that would change classification of same, and the extra helper engineer should be compensated at through freight rates.

Question: Is engineer in through freight service entitled to local freight rates when required to move cars standing at station en route from one track to another at such station to enable him to get his train into clear?

Answer: No.

Roustabout Service.

ARTICLE 19.

Section 1. (a) Engineers assigned to perform switching, assembling and distributing cars may be run in and out and through regular assigned terminals without regard to rules defining the completion of trips. Time to be computed continuously from the time required to report for duty until released at home or district terminal. Local freight rates will apply according to class of engine and district on which used. One hundred miles or less, eight hours or less, to constitute a day. Assignments will be confined to a radius of 100 miles or if assignment should be in excess of 100 miles, overtime will be paid on basis of eight hours. Overtime shall be paid for on the minute basis at an hourly rate of three-sixteenths of the daily rate,

(Plaintiff's Exhibit No. 1 continued)

according to the class of engine or other power used.

(b) Assignments of engineers to this service will be made by bulletining vacancies or new runs in accordance with rules in effect. Bulletin will designate one home terminal and time engineer will begin work.

(c) Engineers required to go beyond limits of assignment will be allowed a minimum of 100 miles at the rate applying on the locomotive in the service and on the district where performed for each time so used. Time thus consumed to be excluded in computing overtime worked on regular assignment.

The above to apply to points listed below without prejudice to existing rules:

Coast Division—Santa Cruz.

Stockton Division—Merced, Modesto, Turlock, Lodi.

San Joaquin Division—Porterville, Oxnard.

Sacramento Division—Marysville.

Los Angeles Division—Brawley, El Centro, Calexico.

Western Division—Santa Rosa.

1. Engineers will be guaranteed mileage of their assignments, but this does not change present basis of applying weekly guarantee.

2. Passenger service, helper service and work train service will not be included in roustabout assignments.

(Plaintiff's Exhibit No. 1 continued)

3. Following example will illustrate what is intended by language reading "Engineer required to go beyond limits of assignment will be allowed a minimum of 100 miles":

Engineer assigned to perform switching at Brawley and work between that point and Niland, including West Moreland Branch, home terminal Brawley, time to begin work 7 A. M., required to make trip Niland-Indio or go beyond Niland or Brawley in any class of service will begin a new day and will be paid under the rules governing class of service performed.

This example does not imply that engineer may not be assigned to work both ways out of Brawley, but in every case the limits of assignments specified in bulletin will govern.

Engine Breaking Down.

ARTICLE 20.

It will be understood that where a relief engine is sent to take the place of a disabled engine in passenger service the engineer beginning the trip is entitled to take the relief engine and complete the trip.

Making Repairs to Engines.

ARTICLE 21.

Engineers on branch runs, or other portions of the road where engines do not run into round-

(Plaintiff's Exhibit No. 1 continued)

houses where machinists are located, and are obliged to make such repairs on engines as do not appertain to the duties of an engineer, shall be paid for all time thus employed at 77 cents per hour. When work is done engineer will make list of same on trip cards to be approved by the Master Mechanic.

Damage to Engines.

ARTICLE 22.

Charges of carelessness against engineers causing damage to engines or other company property will receive full and fair investigation and when such damage is found to be due to defective material, or workmanship, or where there is reasonable doubt as to the cause of such damage, engineers will not be held responsible.

Work of Trainmen.

ARTICLE 23.

Engineers will not be required to do work that should properly be included in the duties of trainmen.

Pay for Stock Killed.

ARTICLE 24.

Engineers will not be required to pay for stock killed, nor will fines for breakage or damage of any kind be imposed on engineers.

(Plaintiff's Exhibit No. 1 continued)

Timetable Mileage Allowed.

ARTICLE 25.

Section 1. In computing mileage of a run, actual timetable mileage only will be counted, excepting on runs less than 100 miles and as specified in Articles 3 and 12.

Time Claimed and Not Allowed.

Sec. 2. When time claimed on trip cards is not allowed, the engineer interested will be promptly notified by the Superintendent and given reasons why said time should not be allowed.

Statement of Facts.

Sec. 3. When claims are presented to the Superintendent by the Local Chairman, the latter will submit a statement of facts in the case and refer to schedule rule or settlement on which the Organization bases its claim. If the claim is not allowed by the Superintendent, he will furnish the Local Chairman with a statement of facts and reasons why claim is not allowed. If conference is desired by the Organization, same will be granted without unnecessary delay. If claim is not disposed of in conference, the Superintendent, or his representative, and the Local Chairman should prepare a joint statement of facts for the information of the General Manager, or his representative, and the General Committee, Brotherhood of Locomotive Engineers. If Superintendent and Local Chair-

(Plaintiff's Exhibit No. 1 continued)

man fail to agree on a joint statement of facts, they will prepare separate statements, setting forth their contentions. It is understood no argument should be used in the statement of facts.

Adjustment of Similar Claims.

Sec. 4. Where settlements are made in adjustment of certain claims, other claims that are of similar nature can usually be adjusted on the same basis, and so far as similarity of conditions will permit, this will be done.

Answering Correspondence.

Sec. 5. Correspondence will receive attention of Officials and reply made as promptly as possible.

Leave of Absence and Transportation for Committeemen.

Sec. 6. Committeemen representing employees governed by the provisions of this agreement will be granted leave of absence and furnished transportation without unnecessary delay.

Held for Service.

ARTICLE 26.

Engineers held at any point for special service will be paid one day's pay at the minimum rate of the division and for service so held for each calendar day on which no service is begun. When held at home terminals, the time to be computed from

(Plaintiff's Exhibit No. 1 continued)

the time he should have been sent out in his regular turn. Engineer on assigned run so held shall receive not less than if not held off his run.

Court Service, Inquests, Fuel and Safety Meetings,
Boards of Inquiry and Investigations.

ARTICLE 27.

Section 1. Engineers ordered into court service as witnesses in the service of the Company, or to attend coroner's inquest, safety meetings, fuel meetings, boards of inquiry, or investigations, shall be compensated as follows, with necessary expenses when away from home terminal. Expense account to be approved by the department under which the men in question serve. If required to lose time engineers shall be paid not less than they would have earned had they been used in regular turn with a minimum average of not less than \$6.33 per day. If no time is lost but engineers are required by the Company to deadhead from terminal to another point or from some point to terminal before beginning day's work, or after completion of same, or on layover day, for any of the above purposes, they will be paid \$6.33 per day in addition to compensation for service performed on that date.

Sec. 2. If called for the purpose of giving depositions at home terminal on regular layover days and go out in regular turn on regular run, without loss of time, engineers will be paid for actual time consumed at 69 cents per hour.

(Plaintiff's Exhibit No. 1 continued)

Sec. 3. Engineers will not be called for any other service while being held off for court service.

Note: Regarding investigations: The provisions herein will apply when man is found not at fault.

Deadhead Service.

ARTICLE 28.

Engineers deadheading on Company's business (or in case of an engineer transferred from one division of the road to another by request of the Company, or learning the road) on passenger trains, will be paid for the actual mileage at 6.44 cents per mile; and for deadheading on other trains at 7.09 cents per mile; provided, that a minimum day at the above rate will be paid for the deadhead trip if no other service is performed within twenty-four (24) hours from time called to deadhead. Deadheading resulting from the exercise of seniority rights or in the adjustment of miles under Article 32, Section 6, Par. D, will not be paid for.

Question: Engineer called to deadhead to make 16 hour relief. Not needed and returned deadhead to terminal. In what position should he be placed on board on return to terminal?

Answer: At foot of list in order of his arrival.

Question: (a) In case where engineers cut off list are transferred from one seniority district to another for temporary service, are they entitled to payment for time learning road on division to which temporarily transferred?

(Plaintiff's Exhibit No. 1 continued)

Answer: Men so transferred, if cut off working list on division from which transferred, not entitled to payment for time learning road or deadheading.

Question: (b) Engineers taken from working list and transferred?

Answer: Such men are entitled to deadhead payment; also time learning road.

Question: In case where extra list is reduced under Article 32, Section 6, (a) and one or more of men cut off list is holding assignment or filling vacancy at outside point, is the man, or men, dead-headed out to furnish relief, entitled to payment for deadheading?

Answer: Yes; however, if it is known that men cut off list will return to terminal within four days from 12:01 A. M., date list is cut, no relief will be furnished, and man cut off will continue in service until return to terminal.

Question: Vacancy occurs on outside passenger run; account no extra passenger engineers available, pool freight or extra engineer is used to fill the vacancy. Later an extra passenger engineer becomes available and displaces the pool freight or extra engineer filling the vacancy. Are both engineers entitled to deadhead mileage?

Answer: No; pool freight or extra man first sent out to fill vacancy is entitled to deadhead payment both going to and returning when displaced by extra passenger engineer. The extra passenger

(Plaintiff's Exhibit No. 1 continued)

engineer, however, should not be paid for dead-heading either going or returning when displaced by regular engineer returning.

Question: Where engineers make application for, and are assigned to run operating over a part of a seniority district with which they are not familiar, making it necessary for them to learn the road prior to taking service on run, shall they be compensated for time engaged in learning the road?

Answer: No; when engineer is required to learn a portion of the road with which he is not familiar, he will do so on his own time.

Motor Car Service.

ARTICLE 29.

Section 1. Engineers making application for motor car service and those qualifying as motor-men will retain their rights in steam service, with the understanding that having accepted the motor car service they will remain in such service until they can be relieved by an engineer who has qualified for such service.

Sec. 2. Rates and rules applying to steam service will apply to motor car service. Overtime in passenger service at one-eighth of the daily rate.

Sec. 3. When additional motor cars are put into service, or vacancies occur in motor service, engineers may make application for same and will be assigned to service according to seniority, ability

(Plaintiff's Exhibit No. 1 continued)

and qualification, the qualifying features to be decided by the Superintendent and Master Mechanic.

Engineers' Call Order.

ARTICLE 30.

Section 1. Engineers will be called for all service as nearly as practicable one hour and thirty minutes before the time required to report for duty. Caller will be provided with a book in which shall be shown the time the engineer called shall report for duty and the time he is to leave. The engineer shall sign the book and register the time at which called.

Note: When engineer standing first out cannot be found or who lays off at time call is made for deadhead trip to outside point, the engineer standing next out shall be sent and paid for deadheading in both directions. When the engineer who stood first out is found or reports, he will be sent to outside point without deadhead compensation in either direction.

Question: What method should be followed in determining whether or not engineer may be used for additional service after making one or more trips?

Answer: Forecast should be made by taking the average time consumed for a period of 15 days for the train (if scheduled), or for trains handling similar traffic (if an extra), running in the direction and between the points trip is to be made, to which should be added the time engineer is required to be on duty before leaving, and the average time

(Plaintiff's Exhibit No. 1 continued)

consumed in reaching roundhouse where engineer is relieved, exceptions being when abnormal conditions prevail such as severe storms, washouts, and where interruptions of the line could be reasonably expected.

Sec. 2 (a) Engineers assigned to regular runs will be run first in first out of all terminals between which such runs are bulletined to run, and on runs to which such engineers are separately assigned. If schedules are disarranged so this cannot be done, they will be run first in first out until returned to regular runs.

(b) Engineers in regular pooled freight service will be run first in first out of all terminals of their assignment. Only a sufficient number of engineers will be assigned to a pool to handle the business with promptness and dispatch.

Question: How should extra engineer be handled who is called to fill vacancy on pool freight list or is augmenting such list?

Answer: He will remain in pool freight service, taking turn out with other engineers in pool until return to terminal where assigned to extra list. However, should extra list be maintained at an away-from-home terminal and engineers thus assigned are run to home terminal, where extra list is maintained, they will, upon arrival at said home terminal, be promptly deadheaded to their extra list or after required rest period, without run-around penalty. If there are no engineers available at such points who are entitled to the work, en-

(Plaintiff's Exhibit No. 1 continued)

gineers may be returned to their assigned extra board in service.

Sec. 3. (a) Engineers assigned to extra list shall in all cases run first in first out from the terminal where assigned, filling all vacancies in freight service, helper or other service that may be assigned to such extra men, except that vacancies for a period of 10 days or more in road service may be filled after the 10th day, by the senior qualified engineer in freight service making application, but in passenger or mixed service where no extra passenger engineers are available, the senior qualified engineer making application will, after the 10th day, be assigned at the home terminal of the run, to fill the vacancy; if no application is received the first pooled freight engineer having necessary experience will be used. (Two years' experience in actual road service and sixty days on seniority district where vacancy occurs). In case the senior qualified engineer is not available, he will be assigned to fill the vacancy when he applies for it (provided the run has not been taken by an extra passenger engineer), and no deadhead time, or time lost, will be allowed for transferring men to, or from runs of preference.

Note: It is understood that the term "senior qualified engineer in freight service" will include qualified engineers on extra lists, but will not include engineers in work train service or helper service; however, engineers assigned to helper serv-

(Plaintiff's Exhibit No. 1 continued)

ice are privileged to make application and fill vacancies under this Section in mixed train and passenger service.

Note: An engineer taking a run under this section will not be permitted to vacate same, unless displaced under the rules or assigned by bulletin to another run.

Note: Two years' experience as referred to is interpreted to mean an engineer will be required to be on the board ready for service not less than 610 days following promotion before he will be considered eligible for passenger service.

Should engineer perform yard service during this period, 40 days of such yard service will be credited to the engineer in qualifying for passenger service under this rule.

Note: When an engineer filling ten-day vacancy under Section 3 (a), Article 30, Engineers' Agreement, lays off, the senior engineer making application for vacancy will be assigned to same, and the engineer who laid off while filling ten-day vacancy, on reporting for duty, will be required to resume service on the vacancy, providing he has not been displaced by a senior engineer or by a regular engineer resuming duty on his assignment.

Question: Do requirements of Section 3 (a), Article 30, as to experience necessary for engineers filling vacancies in passenger service, apply to vacancies bulletined for seniority choice as well as temporary vacancies?

Answer: Yes.

(Plaintiff's Exhibit No. 1 continued)

Question: In case where passenger vacancy is to be filled by pool freight engineer, and there is a "space" standing first out on pool freight board at time of call for passenger service, should the extra engineer standing for the pool freight "space" be called or should the next qualified pool engineer be used.

Answer: Under above circumstances, first extra engineer who is qualified for passenger service should be called and used; if there are no extra engineers on board who are qualified for passenger service, "space" will be runaround and next pool freight engineer who is qualified for passenger service used.

Question: In case no extra passenger engineers available and pool freight or extra engineer is used in passenger service (except in filling vacancy as per Article 30, Section 3), how should he be handled on arrival at outside terminal?

Answer: Will be marked up on pool freight list and take his turn in that service.

(b) In filling vacancies in passenger or mixed service for a period of ten days or over, on Portland Division, where no extra passenger lists are maintained, the senior engineer making application for the run shall be assigned to fill the vacancy.

Temporary Vacancies In Yard Service

(c) When there are no extra engineers who are restricted to yard service available, temporary va-

(Plaintiff's Exhibit No. 1 continued)

cancies in this service will be filled by engineers from the extra list of engineers not restricted, except temporary vacancies of ten (10) days or more, after the tenth day may be filled by the senior qualified engineer making application. Engineers restricted to yard service will have preference in filling vacancies in yard service as outlined in Section 3 (b), Article 32. Deadhead time or time lost account of men transferring from one yard to another under this section will not be paid for.

Extra Passenger List.

Sec. 4. (a) Engineers assigned to the extra passenger list, when available, shall do all extra passenger work assigned to such list, and shall run first in first out, but when filling vacancies shall hold such vacancies until regular man returns to duty or run is claimed by some engineer under the provisions of Sections 10 and 12 of Article 32, it being understood in all cases when extra men replace regular assigned engineers in any service, they shall receive pay and overtime on same basis as such assigned men.

(b) Should it be necessary to use a pooled engineer on an assigned run account no other men available he will take the conditions of the regular assignment and on return to terminal shall immediately go on the pool list, and should it again be necessary to send out a pooled man on the assign-

(Plaintiff's Exhibit No. 1 continued)

ment for the above reason same conditions will apply.

In case it is necessary to send pooled engineer to take an assignment with terminal of run away from his headquarters because of no other men available, he will take the conditions of the regular assignment, but must be relieved and returned to his headquarters as soon as extra men are available.

Above will not apply to pooled engineers used in switching service.

Question: Should pooled freight engineer filling temporary vacancy in passenger service on run operating from outside point to district terminal and return, be displaced at the district terminal before completion of day's assignment by extra passenger engineer who has become available?

Answer: No; pool freight engineer should complete day's assignment. The extra passenger engineer should deadhead to home terminal of run and make displacement at that point.

Order for Calling Engineers.

(c) When call is made for more than one engineer for the same train, one or more of them to doublehead, help or deadhead on the train, the call shall be made first, to man the train; second, to doublehead; third, to help; and fourth, to deadhead; using them first in first out. Upon their arrival at terminal they shall register in in accordance

(Plaintiff's Exhibit No. 1 continued)

with their standing at the time call was made at the initial terminal.

Local Agreements.

(d) Local Committees of Brotherhood of Locomotive Engineers and local officials may enter into local agreements as to the filling of temporary vacancies in passenger, freight or yard service. Such local agreements shall be submitted to the General Manager, or his representative, and the General Chairman, Brotherhood of Locomotive Engineers, for approval, and if approved, shall become effective on a date to be specified by the General Manager and General Chairman, and will remain in effect until changed by the same authority.

Runarounds.

Sec. 5. Engineers in like service, who are run around through no fault of their own, at any terminal shall be allowed 50 miles and stand first out; if not called for service within the limit of eight hours, 100 miles will be allowed and stand last out. Runarounds will be paid at the rate applying to engine he should have been used upon.

Question: Engineers assigned to runs with terminal at outside point, take their engine to district terminal, which is off their assigned territory, for boiler wash, or other necessary attention, after which they return with engine to their assignment. Is it permissible to couple this light engine into

(Plaintiff's Exhibit No. 1 continued)

train out of district terminal on return movement, without runaround penalty to engineers standing first out at such terminal?

Answer: Yes; provided train into which engine is coupled does not require and would not be given help out of such terminal.

Question: In case an engineer is runaround by three different engineers within a period of eight hours, is he entitled to 50 miles for each runaround, or a total of 150 miles?

Answer: No; engineer runaround as above and not called within the limits of eight hours, would be entitled to 100 miles and go "last out".

Question: Engineer assigned to through passenger service is called for train to which assigned, train running in two sections, and account power distribution, regular assigned engineer used on the second section and pool freight engineer used on first section. Is assigned engineer entitled to runaround?

Answer: This engineer having been called for service to which assigned and necessary change of power resulting in his being used on second section, does not entitle him to runaround.

Question: In case it is necessary to use an assigned engineer with layover at outside point, for service on his layover day, is extra engineer standing first out at district terminal, where extra list is maintained, entitled to runaround?

(Plaintiff's Exhibit No. 1 continued)

Answer: The extra man not being at point out of which regular engineer was used, is not entitled to runaround.

Special Passenger Service.

Sec. 6. It is understood under this Article, that the Company has the privilege to use any engineer in special passenger service.

Note: The runaround penalty is not waived by the use of engineers in special passenger service.

Called and Not Used.

Sec. 7. When engineers are called for any service and not used, they shall be allowed a minimum of two hours at 69 cents per hour, and at same rate for each additional hour held over two hours.

When call is annulled and no instructions given engineer with respect to further duty, the first call will be paid for in accordance with this Section, the allowance depending upon whether or not any service is begun. However, if engineer is not released, and instructed to come on duty again later for service originally called for, or some other service, or service is changed while engineer is on duty, departing in service other than that originally called for, time of trip on which he departs will be computed from time coming on duty on original call.

(Plaintiff's Exhibit No. 1 continued)

Held Away From Home Terminal

Sec. 8. (a) Engineers will be allowed as much of their layover as possible at terminals where shops are located or where majority of the engineers on the runs reside, without detriment to the service or expense to the Company.

(b) Engineers in pool freight, extra passenger, and in unassigned service held at other than home terminal will be paid continuous time for all time so held after the expiration of 16 hours from the time relieved from previous duty, at the regular rate per hour paid them for the last service performed. If held 16 hours after the expiration of the first 24-hour period, he will be paid continuous time for the next succeeding 8 hours, or until the end of the 24-hour period and similarly for each 24-hour period thereafter. Should an engineer be called for duty after pay begins, time will be computed continuously, provided that, if overtime accrues on the trip, that portion of the overtime due to starting pay at the expiration of the 16-hour period instead of at the time actually required to report for duty shall be paid at the pro rata rate, in order that time and one-half for overtime will not be so applied as to increase the rate paid for time growing out of the held away from home terminal rule.

(Plaintiff's Exhibit No. 1 continued)

Example—

• Time begins at 2 A. M.

Required to report for duty at A. 6 A. M.

Runs A to B—100 miles, 6 A. M.—1 P. M.

Relieved at B..... 1 P. M.

Compensation—As result of computing time from expiration of 16-hour period from time relieved from previous duty, instead of at the time actually required to report for duty, engineer would be entitled to 3 hours at pro rata rate and time and one-half would not apply.

(c) When layover of pooled engineers away from home terminal is excessive the matter will be corrected by the Superintendent.

Rest Rule.

Sec. 9. (a) No engineer shall be required to be on duty when he needs rest; nor shall an engineer be permitted to run on the road when his physical ability has been fairly taxed by previous service before he has had needed rest.

(b) When an engineer feels he needs rest he must so indicate in writing on the roundhouse register at the time he registers his arrival, or by wire, if on the road between terminals, giving the number of hours he requires, which must be either eight, ten or twelve hours, but in no case to exceed 12 hours; the hours to be considered from time of registering in until time called. After marking rest

(Plaintiff's Exhibit No. 1 continued)

the hours as indicated on register will not be changed.

Extra Lists—Where Maintained.

Sec. 10. Ordinarily extra lists will be maintained only at division terminals and effort will be made to fill all vacancies or new runs, not otherwise provided for, from these lists. When necessary, extra lists may be established at outside points where assigned runs terminate, or at an assigned helper station, but they will be maintained only for such time as the earnings of engineers thereon average the equivalent of six hundred miles per week. Such extra lists will not be established for less than ten days.

A one man extra list may be maintained at any point. Engineer on such one man extra list will be guaranteed the equivalent of 600 miles per week during period such extra list is confined to but one man. In computing guarantee, Monday will be considered as first day of week, and in computing periods of less than one week, pro rata of guarantee for number of days assigned to extra list will be allowed.

In making up guarantee, mileage so allowed will be paid at the rate applying to the locomotive on which last used. Mileage deadheading to and from such extra list will be included in computing guarantee.

(Plaintiff's Exhibit No. 1 continued)

When such extra list is discontinued and extra man protects list beyond 12 o'clock noon, that day will be included in computing guarantee; likewise, when man is sent out of service on one man extra list, reports and is placed on extra list prior to 12 o'clock noon, that day will be included in computing guarantee.

Where extra engineers are assigned to an outside point as provided above, such point will be considered as their home terminal and they will be used to fill vacancies or perform extra work assigned to such extra list. If engineers thus assigned are run to division terminals in extra service where extra list is maintained, they will, upon arrival at a division terminal be promptly dead-headed to their assigned territory or run back on light engine after required rest period without run-around penalty. If there are no engineers available at such points who are entitled to the work, engineers may be returned to their assigned territory in service.

District Assignment of Engineers.

ARTICLE 31.

Section 1. Engineers in through passenger service will be assigned as follows:

(Plaintiff's Exhibit No. 1, continued)

| | | |
|-----------------------------------|---|----------|
| Between Portland and Roseburg | } | Via |
| Roseburg and Ashland | | Siskiyou |
| Ashland and Dunsmuir | | Line |
| Portland and Eugene | } | Via |
| Eugene and Klamath Falls | | Cascade |
| Klamath Falls and Dunsmuir | | Line |
| Dunsmuir and Gerber | | |
| Gerber and Sacramento-Oakland | | |
| Ogden and Carlin | | |
| Carlin and Sparks | | |
| Sparks and Roseville | | |
| Roseville and Oakland | | |
| Oakland and Fresno | | |
| Fresno and Bakersfield | | |
| Bakersfield and Los Angeles | | |
| San Francisco and San Luis Obispo | | |
| San Luis Obispo and Santa Barbara | | |
| Santa Barbara and Los Angeles | | |
| Los Angeles and Yuma | | |
| Yuma and Tucson (via Gila) | | |
| Yuma and Tucson (via Phoenix) | | |
| Tucson and Lordsburg | | |
| Lordsburg and El Paso | | |

Sec. 2. Engineers assigned to main line pooled freight service will be assigned as follows:

Between Brooklyn and Eugene.
 Eugene and Roseburg
 Roseburg and Ashland
 Ashland and Dunsmuir

(Plaintiff's Exhibit No. 1 continued)

Eugene and Crescent Lake

Crescent Lake and Klamath Falls

Klamath Falls and Alturas

Alturas and Wendel

Klamath Falls and Dunsmuir

Dunsmuir and Gerber

Gerber and Roseville

Ogden and Carlin (with layover at Montello)

Carlin and Imlay

Imlay and Sparks

Sparks and Roseville

Roseville and Tracy-Fresno

Fresno and Bakersfield

Bakersfield and Los Angeles

Oakland and Roseville-Tracy-San Jose-

San Francisco

San Francisco and Watsonville Junction

Watsonville Junction and San Luis Obispo

San Luis Obispo and Santa Barbara

Santa Barbara and Los Angeles

Los Angeles and Indio

Indio and Yuma

Yuma and Gila

Yuma and Phoenix

Phoenix and Tucson

Gila and Tucson

Tucson and Lordsburg

Lordsburg and El Paso

(Plaintiff's Exhibit No. 1 continued)

Sec. 3. Should it become necessary at any time to make changes in assignments as outlined in Sections 1 and 2, this Article, it will be done in accordance with Section 2, Article 13.

Sec. 4. When it is necessary account no other engineers available to use engineers assigned to regular runs or pooled freight service beyond the limits of their assignments, they will, upon arrival at a division terminal, be promptly deadheaded to their assigned territory or run back on light engine after required rest period without runaround penalty. If there are no engineers available at such points who are entitled to the work; engineers may be returned to their assigned territory in service.

Seniority of Engineers.

ARTICLE 32.

Section 1. All main lines and connecting branch lines (not otherwise specified) shall be divided into seniority districts as relates to seniority rights of engineers as follows:

Western District.

Between Oakland and Sacramento, Oakland and Tracy, Oakland and San Jose and Santa Clara and Redwood.

Stockton District.

Between Tracy and Fresno, Tracy and Sacramento, and Lathrop and Fresno.

(Plaintiff's Exhibit No. 1 continued)

Sacramento District.

Between Sacramento and Red Bluff, Davis and Red Bluff, Sacramento and Sparks, including all branch lines terminating at Sacramento, including the Placerville Branch.

Sparks District.

Between Sparks and Carlin, Hazen and Keeler.

Ogden District.

Between Carlin and Ogden.

Shasta District.

Between Red Bluff and Ashland, Black Butte and Klamath Falls.

Portland District.

Between Portland and Ashland, Eugene and Klamath Falls.

Coast District.

Between San Francisco and Santa Barbara.

San Joaquin District.

Between Santa Barbara and Los Angeles, Los Angeles and Fresno and Kerman, Mojave and Owenyo.

Los Angeles District.

Between Los Angeles and Yuma, including all branch lines terminating at Los Angeles.

(Plaintiff's Exhibit No. 1 continued)

Tucson District.

Between Yuma and El Paso, via Gila and Lordsburg, including Nogales Branch, and Globe Division of the former Arizona Eastern Railroad, Bowie to Miami (including branch lines) and the Cochise-Gleeson Branch.

Phoenix District.

Former Phoenix Division of the former Arizona Eastern Railroad, Hassayampa to Christmas, including branch lines Phoenix to Maricopa and Casaba.

Sec. 2. (a) When a railroad system, or portion thereof, is leased or absorbed by the Southern Pacific (Pacific Lines) the seniority rights of the engineers found employed thereon shall not be disturbed unless and until so determined by the General Committee of Adjustment and negotiated with the Management.

(b) When it becomes necessary to readjust the service of the merged roads on account of runs extending over other districts or a part thereof, such runs shall be assigned as provided for in Section 15, this Article.

(c) Should this rule be impracticable on account of insufficient mileage in roads merged, engineers found employed thereon will take seniority rights on the entire district to which added in accordance with seniority date in service as an engineer on absorbed road.

(Plaintiff's Exhibit No. 1 continued)

Seniority Rule.

Sec. 3. (a) Rights of engineers to preference of runs shall be governed by seniority in service of the Company as engineers and seniority of the engineer as herein defined shall date from first service as engineer on the district where seniority rights are claimed, except as provided in Sections 3 (b), 5 (c), 5 (g), 5 (i) and 5 (j), this Article.

Yard Service Seniority Rule.

(b) Engineers who are restricted to yard service and whose names appear on permanent yard engineers' seniority list as of October 1, 1918, shall have preference for all yard positions in order of their seniority and shall have preference over all engineers who are qualified for road service.

Engineers restricted to yard service under this section, who are eligible and who desire to go into road service, will take seniority from date of first service after qualifying for road service. When temporarily cut off on account of reduction in the road list, they will be permitted to be returned to yard service and to exercise therein their previous yard seniority.

Road engineers permanently disabled physically, or road engineers permanently restricted to yard service by the Company, may exercise their seniority in yard service over engineers not restricted, but cannot displace engineers whose names appear on

(Plaintiff's Exhibit No. 1 continued)

permanent yard engineers' seniority list as of October 1, 1918. This in no way affects the application of Section 12 (c) of this Article.

Assignment of Engineers.

Sec. 4. (a) The Company will not assign any more engineers to each district or run than is necessary to move the traffic with promptness.

(b) Where there is a surplus of engineers for the business of the district, the oldest engineer in point of seniority shall have the preference for employment.

Augmenting and Reducing Extra Lists.

(c) In the matter of augmenting and reducing extra lists and deadheading engineers resulting therefrom: In cases where the Company moves engineers from one point to another to augment a list for a rush period or for a short period of time, the engineers so transferred should be paid for deadheading and when their services are no longer required at the point to where sent the same engineers should be returned and compensated for deadheading to the point or station where originally stationed.

In the matter of reduction of extra lists account slack business: This is done at the request of the engineers, and the changing of engineers from one point to another, as the result of a reduction of the extra list, pay for deadheading will not be made.

(Plaintiff's Exhibit No. 1 continued)

Hiring and Promotion.

Section 5. (a) Firemen shall rank on the Firemen's roster from the date of their first service as fireman or hostler, when called for such service, except as provided in Section 5 (k), and when qualified shall be promoted to positions as engineers in accordance with the following rules:

(b) Firemen shall be examined for promotion according to seniority on the Firemen's roster, and those passing the required examination shall be given certificates of qualification and when promoted shall hold their same relative standing in the service to which assigned.

(c) If for any reason the senior eligible fireman or engineer to be hired is not available and junior qualified fireman is promoted and used in actual service out of his turn, whatever standing the junior fireman so used establishes shall go to the credit of the senior eligible fireman or engineer to be hired, provided the engineer to be hired is available and qualifies within thirty days. As soon as the senior fireman or engineer to be hired is available, as provided herein, he shall displace the junior fireman, who shall drop back into whatever place he would have held had the senior fireman to be promoted or engineer to be hired been available and the junior fireman not used.

Note: Qualification, as referred to herein, is not intended to include learning of road or signals.

(Plaintiff's Exhibit No. 1 continued)

(d) As soon as a fireman is promoted he will be notified in writing by the proper official of the Company of the date of his promotion, and unless he files a written protest within sixty days against such date he cannot thereafter have it changed. When date of promotion has been established in accordance with regulations, such date shall be posted and if not challenged in writing within sixty days after such posting no protest against such date shall afterwards be heard.

(e) No fireman shall be deprived of his right to examination nor to promotion in accordance with his relative standing on the fireman's roster, because of any failure to take his examination by reason of the requirements of the Company's service, by sickness, or by other proper leave of absence; provided that upon his return he shall be immediately called and required to take examination and accept proper assignment.

(f) The posting of notice of seniority rank, as per Section 5 (d), shall be done within ten days following date of promotion and such notice shall be posted on every bulletin board of the seniority district on which the man holds rank.

(g) Firemen having successfully passed qualifying examinations shall be eligible as engineers. Promotion and the establishment of a date of seniority as engineer, as provided herein, shall date from the first service as engineer, when called for such service, provided there are no demoted engineers.

(Plaintiff's Exhibit No. 1 continued)

back firing. No demoted engineer will be permitted to hold a run as fireman on any seniority district while a junior engineer is working on the engineers' extra list or holding a regular assignment as engineer on such seniority district.

(h) On a seniority district where firemen are required to fire less than three years, all engineers will be hired;

If required to fire 3 and less than 4 years, 1 promoted and 1 hired;

If required to fire 4 and less than 5 years, 2 promoted to 1 hired;

If required to fire 5 and less than 6 years, 3 promoted to 1 hired;

If required to fire 6 and less than 7 years, 4 promoted to 1 hired;

If required to fire 7 and less than 8 years, 5 promoted to 1 hired;

On seniority districts where firemen are required to fire eight years or more, all engineers will be promoted.

The foregoing will not prevent committees from having discharged engineers re-employed or reinstated on their former seniority districts at any time.

(i) If the engineer to be hired is not available when needed and the senior qualified fireman is promoted, the date of seniority thus established shall fix the standing of the hired engineer, who, if available and qualified within thirty days from

(Plaintiff's Exhibit No. 1 continued)

date senior qualified fireman is promoted, will rank immediately ahead of the promoted fireman. The promoted fireman will retain his date of seniority as engineer and will be counted in proportion of promotion.

(j) In case an engineer is hired and used in actual service when, under requirements of Section 5 (h), this Article, a fireman (or firemen) should have been promoted, the date of seniority thus established shall fix the standing of the senior qualified fireman (or firemen), due to be promoted, provided he (or they) are eligible and qualify within thirty days, (except as provided for in Section 5 (e)) who shall rank immediately ahead of the hired engineer on the engineers' seniority list. The hired engineer shall retain his date of seniority and be counted in proportion of engineers to be hired.

(k) The seniority date of the hired engineer shall be the date of his first service as engineer, except as provided in Section 5 (e), 5 (i) and 5 (j) of this Article. It is further provided that engineers hired or permanently transferred from one seniority district to another shall be given a date of seniority as fireman corresponding with their date as engineer. Learning the road or deadheading under orders shall be considered as service.

Reduction of Force.

Sec. 6. (a) When, from any cause, it becomes necessary to reduce the number of engineers on

(Plaintiff's Exhibit No. 1 continued)

the engineers' working list on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district under the following conditions:

First: That no reduction will be made so long as those in assigned or extra passenger service are earning the equivalent of 4000 miles per month; in assigned, pooled or chain-gang freight or other service paying freight rates, are averaging the equivalent of 3200 miles per month.

Second: That when reductions are made they shall be in reverse order of seniority.

Engineers Cut Off List.

(b) When hired engineers are laid off account of reduction in service, they will retain all seniority rights; provided they return to actual service within thirty days from the date their services are required.

Addition to Working List.

(c) Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineers, and as soon as it can be shown that engineers in assigned or extra passenger service can earn the equivalent of 4800 miles per month; in assigned, pooled, chain-gang or other regular service paying freight rates, the equivalent of 3800 miles per month.

(Plaintiff's Exhibit No. 1 continued)

Regulation of Service.

(d) In the regulation of passenger or other assigned service, sufficient engineers will be assigned to keep the mileage or equivalent thereof within the limitations of 4000 and 4800 miles for passenger service, and 3200 and 3800 miles for other regular service, as provided herein. If in any service, additional assignments would reduce earnings below these limits, regulation will be effected by requiring the regular assigned man or men to lay off when the equivalent of 4800 miles in passenger or 3800 miles in other regular service has been reached.

(e) On road extra lists, sufficient engineers will be maintained to keep the average mileage, or equivalent thereof, between 2600 and 3800 miles per month; provided that when engineers are cut off the working list and it is shown that those on the extra lists are averaging the equivalent of 3100 miles per month, engineers will be returned to the extra lists if the addition will not reduce the average mileage, or the equivalent thereof, below 2600 miles per month.

(f) In assigned yard service, regulation will be made by requiring each regularly assigned man to lay off when he has earned the equivalent of 35 days per month.

(g) Where separate extra lists are maintained for yard service, sufficient engineers will be maintained to keep the average earnings between 26 and

(Plaintiff's Exhibit No. 1 continued)

35 days per month; provided that when engineers are cut off the yard working list and it is shown that men are averaging the equivalent of 31 days per month, engineers will be returned to service if the addition will not reduce the average earnings below 26 days per month.

(h) When regulating working lists in the respective classes of service, each list will be handled separately. In the regulation of mileage in road service and days in yard service, neither the minimum nor maximum is guaranteed.

When engineers work in both passenger and freight service, passenger miles will be counted as their equivalent in freight miles in carrying out the mileage regulations.

(i) If any engineer in assigned service exceeds his maximum miles or days in any 30 day working period the excess will be charged to his mileage or days in his following working period. This shall not apply to engineers who are required to exceed their maximum mileage due to a shortage of engineers.

(j) Under the provisions of the above rules it is understood that after all engineers who have been taken off have been returned to service as engineers, the 3100 mileage replacement for road extra men and the 31 day replacement for yard extra men shall not apply with respect to further additions.

(Plaintiff's Exhibit No. 1 continued)

Registering Miles.

(k) Upon arrival of each trip, engineers shall register their total mileage, or equivalent thereof, for current calendar month, on the roundhouse register, showing separately freight and passenger mileage, giving total mileage each class of service to date.

(l) In making reductions and replacing firemen upon the service lists, the same mileage shall apply as in the case of engineers.

(m) The provisions of Section 7 to and including Section 22, this Article, shall be applicable to yard service in the same manner as to road service.

Note: Local Chairmen will have access to time books for the purpose of checking mileage made by engineers under this Section, excepting when timekeepers are using books to get out payrolls or distributions.

Timekeepers will give the Local Chairmen whatever assistance they can during working hours which does not interfere with performing regular duties.

When Superintendent is furnished mileage statement by Local Chairman indicating that engineers are registering their mileage incorrectly or failing to register their mileage as provided by Section 6 (k), this Article, steps will be taken and engineers disciplined, if necessary, to comply with this section.

(Plaintiff's Exhibit No. 1 continued)

Question: What action should be taken when Superintendent or Roundhouse Foreman is notified by Local Chairman in writing that engineers are neglecting or refusing to register their mileage and when officially notified by Local Chairman that engineers had made necessary mileage specified in agreement?

Answer: When notified as above that engineers are failing to register their mileage, they will not be called for service until they have complied with the rules, except in cases of emergency when no other engineers are available, and when officially notified that engineers have made specified mileage, they will not be called for further service during that month, unless some emergency makes their use necessary.

Seniority Lists and Date.

Sec. 7. (a) The Company, on request, will furnish semi-annually to each Division, Brotherhood of Locomotive Engineers, on the district, a complete seniority list of engineers of the district; and will place a copy of the same on bulletin boards at each terminal for sixty days, subject to correction and official acknowledgment by both the officers of the Company and regular Committee of the Brotherhood of Locomotive Engineers. After being thus officially acknowledged, no seniority date of engineers will be changed, except as provided for in

(Plaintiff's Exhibit No. 1 continued)

the provisions of Sections 3 (b), 6 (b), 8 and 9, this Article.^a

(b) Any engineer desiring to enter protest against his date on engineers' seniority list, as posted by the Company, shall make out written protest within sixty days, as specified herein, and submit copy to the Master Mechanic or Local Committee of the Brotherhood of Locomotive Engineers.

Exchanging Rights.

Sec. 8. (a) When engineers on two districts desire to exchange district rights, they will be allowed to do so, provided they receive the approval of the proper officials, taking the junior engineer's rights in both cases.

(b) The provisions of Section 8 (a), this Article, will apply to all portions of the present Pacific Lines, including former El Paso and Southwestern.

Under the above, engineers may transfer, in accordance with the provisions of these sections from Rio Grande Division to the New Mexico Division, or vice versa, or from the Rio Grande or New Mexico Division to any other division on the Pacific Lines.

Temporary Transfer.

Sec. 9. When engineers are temporarily transferred from one seniority district to another, volunteers will be accepted according to seniority; failing to get sufficient volunteers the youngest

(Plaintiff's Exhibit No. 1 continued)

available engineers on the working list of the district from which the transfer is made shall be transferred; if a sufficient number of men cannot be spared from the working list, the list will be supplemented from the senior engineers who have been cut off the working list, and the junior engineers then on the working list so augmented, will be transferred, and will have the privilege of returning at their own request, before the force on the original district is otherwise increased, and shall lose no seniority rights on the first named district. When a temporary transfer is afterwards made permanent, the engineer shall date in seniority on the district to which transferred, on the date of first service on said district.

Bulletining and Assigning Runs.

Sec. 10. (a) All new or vacant runs will be bulletined for seven days for seniority choice of engineers as soon as created or become vacant except on bona fide new runs where it can be anticipated sufficiently in advance such runs will be bulletined for seniority choice of engineers for seven days prior to first date service is to be performed in order that the senior man bidding for same may be placed on the run. Extra engineers working on a run during the life of a bulletin, will be paid in the same manner as if filling vacancy of a regular assigned man. If run is continued for less than six days, bulletin will be considered as

(Plaintiff's Exhibit No. 1 continued)

void and engineer will be compensated as if bulletin had not been issued.

If the senior engineer, or engineers, of the district make application for said run, or runs, prior to the seven days' limit, he or they shall be at once assigned and bulletin withdrawn.

In case a run remains bulletined for seven days and no application is made therefor, the junior engineer of the district shall be assigned.

Bulletin notice shall be sent to each terminal as promptly as possible and the date of the bulletin shall be the date on which the bulletin is posted.

Bulletin notices of assignment of senior applicants to runs secured by seniority choice will be sent to each terminal promptly, and the posting of such bulletin will constitute notice of assignment and will release men shown on such bulletin of assignment from previous run or service if at home terminal of the run; if not at home terminal on date bulletin is posted, will be released from the run or service upon first arrival at home terminal after such date except where the home terminal of the previous assignment is an outside point, in which case the Company will have 72 hours from 12:01 A. M. following the date bulletin of assignment is issued to furnish relief at outside point. Should the Company fail to relieve a man holding a run with home terminal at outside point at the expiration of the 72-hour period, he will be paid beginning at the expiration of the 72-hour period.

(Plaintiff's Exhibit No. 1 continued)

if his new assignment is to be a regular run, not less than he would have earned (exclusive of overtime) had he been placed on such regular run; if new assignment is to pool freight service, will be paid freight rates per class of locomotive and district not less than 12½ miles per hour (terminals of service on which held to apply) for the service performed until placed in pool freight service.

When bulletins are posted on any seniority district for seniority choice of engineers for vacancies or new runs, no application will be considered unless applicant is actually employed on the working list as an engineer and holding seniority on that district. When such bulletins are posted and no applications are received, the junior engineer on the working list of engineers, if qualified; shall be assigned; provided, if the assignment of said junior engineers will necessitate an addition to engineers' road extra list, the senior engineer cut off the working list will be placed on the road extra list before the assignment is made, and he shall be considered the junior engineer on the engineers' working list and if qualified, will be assigned to advertised position. Local Chairman of the Brotherhood of Locomotive Engineers will be furnished copy of all bulletins advertising new runs.

Question: A passenger run bulletined for seniority choice and no applications received therefor. Should the junior engineer on the district be as-

(Plaintiff's Exhibit No. 1 continued)

signed or the junior engineer who is qualified for passenger service?

Answer: Junior engineer qualified for passenger service, as specified in Article 30, Section 3 (a), should be assigned.

Question: In case where an engineer bids in or makes displacement on a run operating on districts over which he has not worked for a considerable period of time, during which changes may have taken place in track conditions, etc., shall he be required to familiarize himself with the road conditions on his own time prior to being permitted to handle train?

Answer: Yes.

(b) When either terminal of a run is changed, a freight or mixed run is changed to a passenger run, a passenger run is changed to a mixed or freight run, an assigned run is put into pool, either freight or passenger, an assigned freight run is changed to local, or assigned local freight is changed to through freight assignment, a motor is substituted for steam service or steam service is substituted for a motor, when the leaving time of a train is changed two hours or more (excepting trains included in a pool), it shall be considered a new run and bulletined accordingly. When trains are run by "roster", pool or several pools, there being a preference in layovers or trains in said pool or pools, senior men will have their choice and will be placed in roster and pools in order of their

(Plaintiff's Exhibit No. 1 continued)

seniority and preference. When an engineer bids or takes a displacement into extra passenger service, he takes his place on board at foot of list.

When on a branch the service consists of one or more freight and passenger trains and one engineer is assigned to the work and the service is changed and one or more engineers are added, making a straight passenger and a straight freight run, such runs shall be considered as new runs and bulletined accordingly.

When a vacancy occurs on any set of runs where the men assigned have a specified layover day, such vacancy shall be bulletined, and when bid in the men already on the runs will have the privilege of taking the preferred layover day, provided such men are older in seniority than the engineer last assigned:

It is understood under the provisions of this section that an engineer losing his run under these conditions may retain run during existence of bulletin.

Refusing Vacant Run.

Sec. 11. All engineer refusing a run vacant or open to his choice, or vacates a run, forfeits thereby no seniority rights, but cannot thereafter claim the run refused, or vacated, except it being again vacant, or in case he is thereafter deprived of a run which he held. Further, an engineer assigned to a run which is rebulletined and is working out

(Plaintiff's Exhibit No. 1 continued)

the life of such bulletin and is not the successful applicant for the run, may displace any engineer his junior in accord with the rules.

Engineer Losing Run.

Sec. 12. (a) An engineer losing his run by reason of its having been discontinued, or having been taken by an engineer his senior, shall be entitled to take any run on the same seniority district held by an engineer his junior in seniority; provided, that where on the run he chooses there are several engineers his junior, and no distinct preference of regular runs or layover days, he shall displace only the junior of such engineers; provided, that the Company will be at no expense for deadheading or time lost on account of such changes.

(b) If on any run there is a preference of layover days at any point, said engineer shall have preference to displace his junior on run having preferred layover days.

(c) When an engineer is physically disabled on the account of loss of the sight of one eye, and is required to give up his run, he will have the privilege of displacing any engineer his junior in branch service; if there is no branch run held by an engineer his junior, he will be placed in yard service and will be paid freight rates as per Section 4, Article 11. This to apply until such time as there is a branch run held by an engineer his junior in seniority.

(Plaintiff's Exhibit No. 1 continued)

Question: Should an engineer who is entitled to displacement under Section 12, Article 32, be permitted to displace an engineer who has been called for service?

Answer: No.

Sec. 13. Engineers assigned to an established run, mileage composing which is certain, and from any cause the mileage is reduced and it becomes necessary to reduce the force thereon, the senior engineers shall have the right to displace engineers on other runs in accordance with their seniority, as specified in Section 12 of this Article.

Sec. 14. An engineer being displaced from a run, or vacating a run, as specified in Sections 12 and 13, this Article, shall make application for run of his choice when ready for service.

Lap Runs.

Sec. 15. When runs are so changed as to cause engineers to run over more than one district, or part thereof, such runs shall be filled in such service in proportion to the mileage of each district over which the run extends; service to be adjusted without unnecessary delay.

Holding Official Positions.

Sec. 16. An engineer with seniority rights on any district, accepting an official position in the service of the Company, or being exclusively employed by the Brotherhood of Locomotive Engi-

(Plaintiff's Exhibit No. 1 continued)

neers on the lines of these companies, retains in either case his seniority rights; upon application, as provided for in Section 12, this Article, he will have the privilege to displace any engineer his junior.

Leave of Absence.

Sec. 17. It is understood that any engineer having been in the service of the Company as an engineer for the space of five years be granted leave of absence for one year and retain his seniority rights; provided, he does not accept a position on any other railroad. After three months, and less than one year, on application, as provided for in Section 12, this Article, he will have the privilege to displace any engineer his junior.

Sec. 18. When an engineer is on leave of absence of less than three months he is presumed to retain his full seniority and will, therefore, be considered as entitled to the privilege of such seniority and may bid for a run by bulletin, as provided for in Section 10, or make application as provided for in Section 12, this Article, to displace any engineer his junior, should his run be taken by an engineer his senior.

Engineers Dismissed or Reinstated.

Sec. 19. An engineer having been dismissed from the service of the Company retains his seniority rights during investigation and appeals of his case;

(Plaintiff's Exhibit No. 1 continued)

if reinstated, he will be returned to service as provided for in Section 12, this Article.

Sec. 20. (a) Runs vacated by engineers, as specified in Section 8, or by an engineer being off for three months or more from any cause, or as specified in Section 17, or engineers dismissed from the service as specified in Section 19, shall be bulletined as provided for in Section 10, this Article.

(b). Service letters will be granted to engineers on leaving the service of the Company if they make request for same, regardless of the length of time employed.

Investigations.

Sec. 21. (a) No engineer shall be suspended or discharged, except in serious cases, where fault is apparent beyond reasonable doubt, until he has had a fair and impartial hearing before the proper officials. During such hearing he may be assisted by an engineer in service on his seniority district. When decision is rendered, if such engineer believes it unjust he may take up his own case on appeal to the higher authorities and, if he so desires, may select an engineer in service on the same seniority district to assist him in presenting his case, but such representation shall be of a purely personal character, and shall not carry with it the sanction of committee representation. No adjustment made by the Company in such cases shall be construed or cited as precedent in any case presented by the Engineers' Committee.

(Plaintiff's Exhibit No. 1 continued)

(b) If an engineer does not handle his own case, as above specified, the regularly constituted committee of the Brotherhood of Locomotive Engineers can appeal through the proper officials to the highest authority; hearing in all cases to be given and decision rendered promptly as possible.

(c) In all cases where a formal investigation is held, the engineer under investigation will be entitled to representation by the Local Chairman of his organization or by any employee of the same grade in actual service on the engineer's seniority district.

Interrogations will be made by the Superintendent or his representative who is holding the investigation. After he has completed the direct examination, officers of the Company who may be attending the investigation will be allowed to interrogate the witness.

If the engineer's representative desires to ask any questions pertaining to the case of the man represented, he will be allowed that privilege.

Where charges are made regarding engineers, same must be in writing.

No demerits will be charged against an engineer's record without giving him an opportunity for defense and allowing him to present his side of the case.

If the Chairman of the Local Committee requests a transcript of the testimony in an investigation that has been made, it will be furnished.

(Plaintiff's Exhibit No. 1 continued)

Note: It is understood the above rules cannot be construed to have been properly observed unless the engineer and/or his representative are confronted with all the charges and evidence and provided with a copy of transcript of all evidence.

(d) If an engineer is suspended or discharged and is proven to have been innocent of the offense charged, he shall be reinstated and paid \$6.87 per day for time lost on such account.

Representation Rule.

Sec. 22. The General Committee of Adjustment, Brotherhood of Locomotive Engineers, will represent all locomotive engineers in the making of contracts, rates, rules, working agreement, and interpretations thereof.

All controversies affecting locomotive engineers will be handled in accordance with the recognized interpretation of the Engineers' contract as agreed upon between the Committee of the Brotherhood of Locomotive Engineers and the Management.

In matters pertaining to discipline, or other questions not affecting changes in Engineers' contract, the officials of the Company reserve the right to meet any of their employees either individually or collectively.

(Plaintiff's Exhibit No. 1 continued).

Miscellaneous Service and
General Regulations.

ARTICLE 33.

Doubling Grades.

Section 1. When engineers in passenger service are required to double on grades or run for fuel or water, ten miles will be allowed for each double. When actual mileage exceeds ten, actual miles will be allowed, such mileage to be added to other mileage made on trip, where mileage in the aggregate exceeds 100, time consumed doubling will not be counted in computing overtime.

Setting Up Wedges, Filling Grease Cups, Etc.

Sec. 2. (a) Engineers will not be required to set up wedges, fill grease cups, or clean headlights at points where competent roundhouse force is employed. Neither will they be required to place on, or remove tools or supplies from locomotives, fill lubricators, flange oilers, headlights, markers or other lamps at points where roundhouse force or engine watchman is employed.

Drinking Water and Containers.

(b) Locomotives will be supplied with necessary ice for drinking water during periods required, with due regard to proper economy. Drinking water containers on locomotives will be cleaned and inspected at terminals and otherwise kept in a sanitary condition.

(Plaintiff's Exhibit No. 1 continued)

Hostlers.

Sec. 3. When the rate of pay for "Outside Hostlers" equals the rate of pay for switch engineers, such positions shall be bulletined for seniority choice of engineers as fast as vacancies occur.

Efficiency Tests.

Sec. 4. We recognize the necessity of making efficiency tests, but when such tests are made they should not be conducted under conditions that are hazardous to the employees.

Switch light tests will be made only when the switch can be seen for a long distance and at trailing point switches. All tests are to be made under operating conditions. It is not the intention to make tests where trains will be stopped on mountain grades where helper locomotives might be stopped in tunnels.

In making surprise tests, engineers will not be required to change indicators, uncover headlights or turn markers.

Official Record of Weights On Drivers.

Sec. 5. (a) For the purpose of officially classifying locomotives, the Company will keep bulletin at all terminals showing actual weight on drivers of all engines in its service, which weight shall also be stenciled on side of cab.

(b) Where locomotive is equipped with trailer truck booster, the total weight on all trailer wheels will be added. Where locomotive is equipped with

(Plaintiff's Exhibit No. 1 continued)

tender booster, total weight on truck so equipped will be added to weight on drivers. Total weights produced by such increased weights shall fix the rates for the respective classes of service.

It is understood that weight on drivers refers to weight on drivers of engine in working condition, which would include sand in sand box, water in boiler, and fire in fire box.

Meals En Route.

Sec. 6. Engineers will be given a reasonable time to eat between terminals if hours on duty make it necessary or conditions of service permit.

When men desire to eat, both the train and engine crews should eat at the same point, notifying the dispatcher in advance where they intend to do so. Where crews stop for this purpose, they will reduce the time of such delay to the minimum.

Vouchers

Sec. 7. For all established shortages of \$2.50 or more, vouchers will be issued. Sums of less than \$2.50 will be carried on next pay roll. It is understood in this connection, however, that where the fault of such shortage lies with the engineer, the time will be carried on next pay roll, regardless of the amount.

Transferring Household Effects.

Sec. 8. Engineers, who are on working lists, either regularly assigned or extra, will be granted

(Plaintiff's Exhibit No. 1 continued)

two free billings of their household effects per year when changing from one point to another on their respective divisions.

Rules Governing Handling and Compensating Engineers Under the Federal Hours of Service Law.

ARTICLE 34.

Section 1. Under the laws limiting the hours on duty, crews in road service will not be tied up unless it is apparent that the trip cannot be completed within the lawful time; and not then, until the expiration of fourteen hours on duty under the Federal law, or within two hours of the time limit provided by State laws if State laws govern.

Sec. 2. If road crews are tied up in a less number of hours than provided in the preceding paragraph, they shall not be regarded as having been tied up under the law, and their services will be paid for under the individual schedules of the different roads.

Sec. 3. When road crews are tied up between terminals under the law, they shall again be considered on duty and under pay immediately upon the expiration of the minimum legal period off duty applicable to the crew, provided the longest period of rest required by any member of the crew, either eight or ten hours, to be the period of rest for the entire crew.

(Plaintiff's Exhibit No. 1 continued)

Sec. 4. A continuous trip will cover movement straightaway or turnaround, from initial point to the destination train is making when ordered to tie up. If any change is made in the destination after the crew is released for rest, a new trip will commence when the crew resumes duty.

Sec. 5. (As amended by the Eight Hour Settlement effective January 1st, 1917.) Engineers in train service tied up under the law will be paid continuous time from initial point to tie-up point. When they resume duty on continuous trip, they will be paid from tie-up point to terminal on the following basis: For fifty (50) miles or less, or four (4) hours or less, one-half day; for more than fifty (50) miles, or more than four (4) hours, actual miles or hours, whichever is the greater, with a minimum of one day. It is understood that this does not permit running engine crews through terminals or around other engine crews at terminals unless such practice is permitted under the pay schedules.

Question: Does minimum allowance of 50 miles for movement from tie-up point to terminal as specified in Section 5, Article 34, apply to cases where engineers tie up under Hours of Service Law at a point within the yard limits of terminal yard?

Answer: Engineers tying up under law within terminal yard limits and before reaching station mile board, shall be paid under provisions of these

(Plaintiff's Exhibit No. 1 continued)

sections and articles, but these provisions will not apply to crews tied up after passing station mile boards. At stations where mile boards not provided, location or designated point agreed upon will govern.

Sec. 6. Road crews tied up for rest under the law, and then towed or deadheaded into terminal, with or without engine or caboose, will be paid therefor as per Section 5, the same as if they had run the train to such terminal.

Sec. 7. If any service is required of an engine crew, or if held responsible for the engine, during the tie-up under the law, they will be paid for all such service.

Sec. 8. The foregoing sections constitute an agreement for the Railway Companies named in the original memorandum and their Conductors, Trainmen, Engineers and Firemen, as to runs that are tied up in conformity with the law, and becomes a part of the schedules or agreements of these roads, and subject to their provisions as to amendment by mutual consent. Nothing herein contained shall be construed to amend or annul any rule in the various agreements with individual roads.

Interpretation.

ARTICLE 35.

In case of disagreement as to interpretation on Articles in this schedule, the Local Committee.

(Plaintiff's Exhibit No. 1 continued)

Brotherhood of Locomotive Engineers, will take up same with division officers and all evidence will be submitted to General Manager, or his authorized representative, for decision, copy of decision to be furnished General Chairman of Engineers' Committee.

Change of Agreement.

ARTICLE 36.

This supersedes previous agreements. This Agreement and accepted rulings now in effect between officials of the Company and representatives of the Brotherhood of Locomotive Engineers shall continue in effect, subject to any subsequent Municipal, State or Federal legislation, and until either party desiring to change any of the foregoing rules or regulations shall have given to the other party thirty days' notice in writing of the change or changes desired.

Signed this 9th day of January, 1931.

For the Company:

R. McINTYRE,

Assistant to General Manager.

For the Brotherhood of Locomotive
Engineers:

P. O. PETERSON,

Chairman, G. C. of A., B. of
L. E.

L. A. BENNETT,

Secretary-Treasurer, G. C. of
A., B. of L. E.

(Plaintiff's Exhibit No. 1 continued)

Memorandum of Agreement.

Following understanding reached in conference January 17, 1928:

(1) It is agreed that two hostler firemen, assigned 12:40 P. M.-8:40 P. M. and 4:40 P. M.-12:40 A. M. shifts Oakland Pier, and one hostler fireman, assigned 6:20 A. M.-2:20 P. M. shift Alameda Pier, East Bay Electric Division, will vacate their assignments, which will be filed by the three senior engineers making application, in accordance with Section 3, Article 33, Engineers' Agreement, and will perform same duties now performed by hostlers.

The three engineers herein referred to will be paid yard engineers' rates, but Article 29, and interpretations thereon, Firemen's Agreement, will govern their working conditions.

(2) Engineers before being assigned to this service will qualify as outlined in Section 3, Article 17, Engineers', and Article 29, Article 30, Section 4, Firemen's Agreements, and will not be displaced for a period of six months; neither will such engineers be privileged to exercise their seniority in bidding into vacancies or new positions for a period of six months (unless cut off working list) and will remain on assignments during life of bulletin and until their relief qualifies. Should these men be used in emergency to handle train, they will be paid minimum passenger guarantee.

(Plaintiff's Exhibit No. 1 continued)

(3) Vacancies in hostling service Oakland and Alameda Piers will be filled from the engineers' passenger extra list, who will be required to familiarize themselves with the movements and duties of hostlers, in order that they may perform their duties satisfactorily, and will receive for such service minimum passenger guarantee.

(4) Following illustrates formula to be followed should force be reduced:

| | | |
|--------------------------|------------|-------------|
| Present assignment | 4 hostlers | 3 engineers |
| Reduction of force | 1 hostler | |
| | 3 hostlers | 3 engineers |
| Reduction of force | | 1 engineer |
| | 3 hostlers | 2 engineers |
| Reduction of force | 1 hostler | |
| | 2 hostlers | 2 engineers |
| Reduction of force | | 1 engineer |
| | 2 hostlers | 1 engineer |
| Reduction of force | 1 hostler | |
| | 1 hostler | 1 engineer |
| Reduction of force | | 1 engineer |
| | 1 hostler | 0 |
| Reduction of force | 1 hostler | |
| | 0 | 0 |

For the Company:

R. McINTYRE,

Assistant to General Manager.

For the Organizations:

P. O. PETERSON,

General Chairman, B. L. E.

J. A. FORD,

General Chairman, B. L. F. & E.

Dated at San Francisco, January 17, 1928.

(Plaintiff's Exhibit No. 1 continued)

General.

Question 57, Int. No. 1, Supplement No. 24—
Should all service, both passenger and freight, formerly paid on a monthly, daily or trip basis, be established upon the mileage basis and paid the rates provided, regardless of the fact that this may in some cases effect a reduction in present compensation?

Decision: Rates of the order shall apply for the respective classes of service, but former higher rates shall be retained.

Question 64, Int. No. 1, Supplement No. 24—
Where daily rates are in excess of standard, how shall overtime rates be determined?

Decision: Service paid on a passenger basis, one-eighth of such daily rate, per hour. Service paid on the freight basis, 3/16ths of such daily rate, per hour.

ARTICLE 10 (c), SUPPLEMENT No. 24.

Special provisions of schedules for irregular conditions, such as crews called and not used, dead-heading, attending court and investigations, and similar miscellaneous rules covering conditions which are not connected with the handling of a train and which provide for payments on the basis of "overtime rates", shall be changed to provide for payments at the former rates, it being the intent that the time and one-half basis shall not apply in such cases. Where, under such rules, time

(Plaintiff's Exhibit No. 1 continued)

in excess of the limits of the day is paid for as overtime, the overtime rates of this order apply.

Question 71, Int. No. 1, Supplement No. 24—Are special allowances based on, say, 30 minutes or less, not to count; over 30 minutes one hour, changed to a minute basis by paragraph (b) of Article 7?

Decision: No. The supplement provides the minute basis only in connection with road overtime.

R. McINTYRE,

Assistant to General Manager,
Southern Pacific Company
(Pacific Lines).

P. O. PETERSON,

General Chairman, B. of L. E.

L. A. BENNETT,

Sec'y-Treas., B. of L. E.

(Plaintiff's Exhibit No. 1 continued)

TABLE SHOWING TIME AFTER WHICH OVERTIME ACCRUES ON RUNS 100 MILES TO 199 MILES IN LENGTH, ON SPEED BASIS OF 12 1/2 MILES PER HOUR.

| Distance, miles | Overtime accrues after hours | Distance, miles | Overtime accrues after hours |
|--------------------|------------------------------------|--------------------|------------------------------------|
| 100 | 8:00 | 131 | 10:29 |
| 101 | 8:05 | 132 | 10:34 |
| 102 | 8:10 | 133 | 10:38 |
| 103 | 8:14 | 134 | 10:43 |
| 104 | 8:19 | 135 | 10:48 |
| 105 | 8:24 | 136 | 10:53 |
| 106 | 8:29 | 137 | 10:58 |
| 107 | 8:34 | 138 | 11:02 |
| 108 | 8:38 | 139 | 11:07 |
| 109 | 8:43 | 140 | 11:12 |
| 110 | 8:48 | 141 | 11:17 |
| 111 | 8:53 | 142 | 11:22 |
| 112 | 8:58 | 143 | 11:26 |
| 113 | 9:02 | 144 | 11:31 |
| 114 | 9:07 | 145 | 11:36 |
| 115 | 9:12 | 146 | 11:41 |
| 116 | 9:17 | 147 | 11:46 |
| 117 | 9:22 | 148 | 11:50 |
| 118 | 9:26 | 149 | 11:55 |
| 119 | 9:31 | 150 | 12:00 |
| 120 | 9:36 | 151 | 12:05 |
| 121 | 9:41 | 152 | 12:10 |
| 122 | 9:46 | 153 | 12:14 |
| 123 | 9:50 | 154 | 12:19 |
| 124 | 9:55 | 155 | 12:24 |
| 125 | 10:00 | 156 | 12:29 |
| 126 | 10:05 | 157 | 12:34 |
| 127 | 10:10 | 158 | 12:38 |
| 128 | 10:14 | 159 | 12:43 |
| 129 | 10:19 | 160 | 12:48 |
| 130 | 10:24 | 161 | 12:53 |

(Plaintiff's Exhibit No. 1 continued)

| Distance, miles | Overtime accrues after hours | Distance, miles | Overtime accrues after hours |
|--------------------|------------------------------------|--------------------|------------------------------------|
| 162 | 12:58 | 181 | 14:29 |
| 163 | 13:02 | 182 | 14:34 |
| 164 | 13:07 | 183 | 14:38 |
| 165 | 13:12 | 184 | 14:43 |
| 166 | 13:17 | 185 | 14:48 |
| 167 | 13:22 | 186 | 14:53 |
| 168 | 13:26 | 187 | 14:58 |
| 169 | 13:31 | 188 | 15:02 |
| 170 | 13:36 | 189 | 15:07 |
| 171 | 13:41 | 190 | 15:12 |
| 172 | 13:46 | 191 | 15:17 |
| 173 | 13:50 | 192 | 15:22 |
| 174 | 13:55 | 193 | 15:26 |
| 175 | 14:00 | 194 | 15:31 |
| 176 | 14:05 | 195 | 15:36 |
| 177 | 14:10 | 196 | 15:41 |
| 178 | 14:14 | 197 | 15:46 |
| 179 | 14:19 | 198 | 15:50 |
| 180 | 14:24 | 199 | 15:55 |

(Plaintiff's Exhibit No. 1 continued)

TABLE SHOWING TIME AND ONE-HALF FOR OVERTIME (18 $\frac{3}{4}$ MILES PER HOUR) EXPRESSED IN MILES. FROM 3 MINUTES TO 8 HOURS, INCLUSIVE.

| Overtime | Miles | Overtime | Miles | Overtime | Miles |
|----------|-------|----------|-------|----------|-------|
| 3 | 1 | 1:49 | 34 | 3:34 | 67 |
| 6 | 2 | 1:52 | 35 | 3:38 | 68 |
| 10 | 3 | 1:55 | 36 | 3:41 | 69 |
| 13 | 4 | 1:58 | 37 | 3:44 | 70 |
| 16 | 5 | 2:02 | 38 | 3:47 | 71 |
| 19 | 6 | 2:05 | 39 | 3:50 | 72 |
| 22 | 7 | 2:08 | 40 | 3:54 | 73 |
| 26 | 8 | 2:11 | 41 | 3:57 | 74 |
| 29 | 9 | 2:14 | 42 | 4:00 | 75 |
| 32 | 10 | 2:18 | 43 | 4:03 | 76 |
| 35 | 11 | 2:21 | 44 | 4:06 | 77 |
| 38 | 12 | 2:24 | 45 | 4:10 | 78 |
| 42 | 13 | 2:27 | 46 | 4:13 | 79 |
| 45 | 14 | 2:30 | 47 | 4:16 | 80 |
| 48 | 15 | 2:34 | 48 | 4:19 | 81 |
| 51 | 16 | 2:37 | 49 | 4:22 | 82 |
| 54 | 17 | 2:40 | 50 | 4:26 | 83 |
| 58 | 18 | 2:43 | 51 | 4:29 | 84 |
| 1:01 | 19 | 2:46 | 52 | 4:32 | 85 |
| 1:04 | 20 | 2:50 | 53 | 4:35 | 86 |
| 1:07 | 21 | 2:53 | 54 | 4:38 | 87 |
| 1:10 | 22 | 2:56 | 55 | 4:42 | 88 |
| 1:14 | 23 | 2:59 | 56 | 4:45 | 89 |
| 1:17 | 24 | 3:02 | 57 | 4:48 | 90 |
| 1:20 | 25 | 3:06 | 58 | 4:51 | 91 |
| 1:23 | 26 | 3:09 | 59 | 4:54 | 92 |
| 1:26 | 27 | 3:12 | 60 | 4:58 | 93 |
| 1:30 | 28 | 3:15 | 61 | 5:01 | 94 |
| 1:33 | 29 | 3:18 | 62 | 5:04 | 95 |
| 1:36 | 30 | 3:22 | 63 | 5:07 | 96 |
| 1:39 | 31 | 3:25 | 64 | 5:10 | 97 |
| 1:42 | 32 | 3:28 | 65 | 5:14 | 98 |
| 1:46 | 33 | 3:31 | 66 | 5:17 | 99 |

(Plaintiff's Exhibit No. 1 continued)

| Overtime | Miles | Overtime | Miles | Overtime | Miles |
|----------|-------|----------|-------|----------|-------|
| 5:20 | 100 | 6:14 | 117 | 7:09 | 134 |
| 5:23 | 101 | 6:18 | 118 | 7:12 | 135 |
| 5:26 | 102 | 6:21 | 119 | 7:15 | 136 |
| 5:30 | 103 | 6:24 | 120 | 7:18 | 137 |
| 5:33 | 104 | 6:27 | 121 | 7:22 | 138 |
| 5:36 | 105 | 6:30 | 122 | 7:25 | 139 |
| 5:39 | 106 | 6:34 | 123 | 7:28 | 140 |
| 5:42 | 107 | 6:37 | 124 | 7:31 | 141 |
| 5:46 | 108 | 6:40 | 125 | 7:34 | 142 |
| 5:49 | 109 | 6:43 | 126 | 7:38 | 143 |
| 5:52 | 110 | 6:46 | 127 | 7:41 | 144 |
| 5:55 | 111 | 6:50 | 128 | 7:44 | 145 |
| 5:58 | 112 | 6:53 | 129 | 7:47 | 146 |
| 6:02 | 113 | 6:56 | 130 | 7:50 | 147 |
| 6:05 | 114 | 6:59 | 131 | 7:54 | 148 |
| 6:08 | 115 | 7:02 | 132 | 7:57 | 149 |
| 6:11 | 116 | 7:06 | 133 | 8:00 | 150 |

[Endorsed]: Pltf. Exhibit No. One. Filed
10/10/40. Walter B. Maling, Clerk, By Harry F.
Fouts, Deputy Clerk.

PLAINTIFF'S EXHIBIT No. 2

Southern Pacific Company
(Pacific Lines)

Southern Pacific Lines

FIREMEN'S AGREEMENT

Effective:

Rates of Pay, October 1, 1937

Rules, June 1, 1939

(Plaintiff's Exhibit No. 2 continued)

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AGREEMENT

It is hereby understood and agreed between the Management of the Southern Pacific Company (Pacific Lines), excluding former El Paso and Southwestern, and the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen that the following rules and regulations governing the rates of pay and working conditions of Firemen, Helpers, Hostlers and Hostler Helpers will be in effect as follows:

Rates of pay, effective October 1, 1937.

Rúles, effective June 1, 1939.

(Plaintiff's Exhibit No. 2 continued)

ARTICLE 1.

Beginning and Ending of a Day.

In all classes of service firemen and helpers' time will commence at the time they are required to report for duty, and shall continue until the time the engine is placed on the designated track or they are relieved at terminal. Firemen are relieved when registering in.

Question 76, Interpretation No. 1, Supplement No. 24:

Does this section contemplate the payment of continuous time between terminals whether crews are tied up under the law or otherwise?

Decision: Yes, deducting time tied up under the law, schedule rules or accepted practices.

ARTICLE 2.

What Constitutes a Trip.

Sec. 1. In passenger or freight service a fireman has reached the end of a trip when he reaches the division or district terminal at which engine crews are usually changed, or arrives at the established terminal of his train, as shown by his assignment, and having done so his trip will be completed and he will take his place on the board in accordance with the rules governing the running of firemen in such service. Should he proceed farther with the same train or be sent out on another train, he will, in either case, begin another trip.

(Plaintiff's Exhibit No. 2 continued)

When steam locomotive is substituted for motor car, in service constituting a regular assignment for an engineer, a fireman temporarily used in such service will be subject to the following working conditions and basis of pay:

(a) Fireman will take conditions of assignment as identified for the engineer and will be allowed a minimum of 150 miles, including overtime at road rates (applicable to last engine used), for each day engaged in or held for such service. Where trip in such service is made from a division or district terminal to a division or district terminal, this rule does not apply.

(b) Fireman en route to point where such service begins, or is returning to his assigned territory after being relieved from such service, will be paid under this rule, unless the run is under bulletin for six days or more.

(c) Extra fireman (or pooled freight fireman as provided in Section 7 of Article 37) working on a run during the life of a bulletin, will be paid in the same manner as if filling vacancy of a regular assigned man. If run is continued for less than six days, bulletin will be considered as void and fireman will be compensated as if bulletin had not been issued and in accordance with paragraph (a).

(d) When miles run or hours worked, including initial and terminal switching, initial and terminal delay and overtime, exceeds 150 miles on any trip or day's work, fireman will be allowed actual compensation earned.

(Plaintiff's Exhibit No. 2 continued)

Sec. 2. On a turnaround trip (where fireman is turned back at an intermediate point), the starting point will be the terminal as well, except as provided for in Section 3, this Article.

Sec. 3. Firemen or helpers in pool or irregular freight service may be called to make short trips and turnarounds, with the understanding that one or more turnaround trips may be started out of the same terminal and paid actual miles, with a minimum of 100 miles for a day, provided:

(1) That the mileage of all the trips does not exceed 100 miles.

(2) That the distance run from the terminal to the turning point does not exceed twenty-five miles.

(3) That firemen or helpers shall not be required to begin work on a succeeding trip out of the initial terminal after having been on duty eight consecutive hours, except as a new day subject to the first-in first-out rule.

(4) Initial call will specify short turnaround service:

(5) This section does not apply to firemen or helpers in pusher and helper service, mine runs, work trains, or wreck trains.

Note: A fireman or helper after completing each trip in short turnaround service shall be placed at the foot of the list and permitted to work his way toward first-out position, but may, if needed for another short turnaround trip within eight hours

(Plaintiff's Exhibit No. 2 continued)

from time ordered to report for duty on first trip, be run around other firemen without runaround penalty.

If fireman placed at foot of list reaches first-out position prior to expiration of eight hours from time first ordered to report for short turnaround service and can be used on another short turnaround trip before the expiration of the first eight hours, it will be optional with the Company to call him for other service or hold him for short turnaround service.

Question 79, Interpretation No. 1, Supplement No. 24:

Must the crew actually leave the terminal before the expiration of eight hours?

Decision: No; but crews should not ordinarily be required to begin work on a second or succeeding trip when it is apparent that the departure from the terminal will be delayed beyond eight hours from going on duty on initial trip.

Question 80, Interpretation No. 1, Supplement No. 24:

In operating turnaround service under this section, may crews be turned at a terminal out of which other crews operate?

Decision: Yes.

Question 81, Interpretation No. 1, Supplement No. 24:

Where crews are called for turnaround service, in what territory may they be used?

(Plaintiff's Exhibit No. 2 continued)

Decision: They may be used in either or both directions out of the initial terminal in territory where it is permissible to use them for other than short turnaround trips.

ARTICLE 3.

Assignments.

Through Passenger Service.

Sec. 1. Firemen in through passenger service will be assigned.

| | |
|-----------------------------------|---------------------|
| Between Portland and Roseburg | } via Siskiyou Line |
| Roseburg and Ashland | |
| Ashland and Dunsmuir | |
| Portland and Eugene | } via Cascade Line |
| Eugene and Klamath Falls | |
| Klamath Falls and Dunsmuir | |
| Dunsmuir and Gerber | |
| Gerber and Sacramento-Oakland | |
| Ogden and Carlin | |
| Carlin and Sparks | |
| Sparks and Roseville | |
| Roseville and Oakland | |
| Oakland and Fresno | |
| Fresno and Bakersfield | |
| Bakersfield and Los Angeles | |
| San Francisco and San Luis Obispo | |
| San Luis Obispo and Santa Barbara | |
| Santa Barbara and Los Angeles | |

(Plaintiff's Exhibit No. 2 continued)

Los Angeles and Yuma
Yuma and Tucson via Gila
Yuma and Tucson via Phoenix
Tucson and Lordsburg
Lordsburg and El Paso

Main Line Pooled Freight Service.

Sec. 2. Firemen in main line pooled freight service will be assigned.

Between Brooklyn and Eugene
Eugene and Roseburg
Roseburg and Ashland
Ashland and Dunsmuir
Eugene and Crescent Lake
Crescent Lake and Klamath Falls
Klamath Falls and Alturas
Alturas and Wendel
Klamath Falls and Dunsmuir
Dunsmuir and Gerber
Gerber and Roseville
Ogden and Carlin (with layover at Montello)
Carlin and Imlay
Imlay and Sparks
Sparks and Roseville
Roseville and Tracy-Fresno
Fresno and Bakersfield
Bakersfield and Los Angeles

(Plaintiff's Exhibit No. 2 continued)

Oakland and Roseville-Tracy-San Jose-
San Francisco

San Francisco and Watsonville Junction

Watsonville Junction and San Luis

Obispo

San Luis Obispo and Santa Barbara

Santa Barbara and Los Angeles

Los Angeles and Indio

Indio and Yuma

Yuma and Gila

Yuma and Phoenix

Phoenix and Tucson

Gila and Tucson

Tucson and Lordsburg

Lordsburg and El Paso

Note: Firemen will be run first-in first-out in direction bound at Montello.

ARTICLE 4.

Passenger Service.

Sec. 1. The minimum passenger rate for firemen and helpers shall be \$5.30, 100 miles or less, five hours or less, shall constitute a minimum day's work in all classes of passenger service, except as otherwise specified; miles made in excess of 100 pro rata.

Sec. 2. On short turnaround runs, no single trip of which exceeds 80 miles, including suburban serv-

(Plaintiff's Exhibit No. 2 continued)

ice, overtime shall be paid for all time actually on duty or held for duty in excess of eight hours (computed on each run from the time required to report for duty to end of that run) within 10 consecutive hours; and also for all time in excess of 10 consecutive hours computed continuously from the time first required to report to final release at end of last run. Time shall be counted as continuous service in all cases where the interval of release from duty at any point does not exceed one hour. Overtime will be paid at one-eighth of the daily rate, with a minimum of 64 cents per hour, and will be computed on the minute basis.

Question 16, Interpretation No. 1, Supplement No. 24:

Is it permissible to definitely assign crews coming under this section on the basis of a minimum day in each direction?

Decision: Yes.

Question 17, Interpretation No. 1, Supplement No. 24:

Where the 8-within-10 hour passenger overtime rule is adopted, may the time consumed in performing extra service, paid for separately, be deducted in computing overtime?

Decision: Where 8-within-10-hour rule applies and incidental service is permissible under the schedules or the practices of individual roads, time consumed in such incidental or additional service

(Plaintiff's Exhibit No. 2 continued)

and paid for separately should not be included in calculating time under the 8-within-10-hour rule.

Question 18, Interpretation No. 1, Supplement No. 24:

Must engine and train crews have same initial terminal?

Decision: No; primarily because train and engine crews have different mileage basis for a day, which has resulted in crews not following same assignment.

Question 19, Interpretation No. 1, Supplement No. 24:

Does this rule apply to extra and unassigned service?

Decision: Yes; in which case call shall specify whether crew is to be paid on turnaround or straightaway basis.

Sec. 3. In all passenger service, the earnings from mileage, overtime or other rules applicable, for each day service is performed shall be not less than \$5.99 for firemen or helpers.

In applying the \$5.99 minimum for firemen in passenger service, it is intended that on assignments where the men run so as to make only the equivalent of a single trip in one direction each day, they shall be paid the guaranteed minimum for each single trip.

For example: On a 100-mile division men double the road Monday, lay over Tuesday, double Wednesday, and lay over Thursday, etc. They should be

(Plaintiff's Exhibit No. 2 continued)

allowed the minimum for each leg of their turn-around trip.

On the same division other crews double the road Monday and Tuesday, and lay over Wednesday, double Thursday and Friday, and lay over Saturday. These men make the equivalent of four single trips every three days, and therefore would not be entitled to the minimum for each trip.

Question 6, Interpretation No. 1, Supplement No. 24:

May amounts earned under overtime rule, terminal delay, backouts, etc., be applied against these guarantees?

Decision: Yes.

Question 7, Interpretation No. 1, Supplement No. 24:

Are former guarantees higher than provided by this section maintained?

Decision: Yes.

Question 8, Interpretation No. 1, Supplement No. 24:

May runs of under 80 miles in each direction be placed on a one-way basis and a minimum day allowed in each direction?

Decision: Yes, if definitely assigned, in which case overtime rules applicable to through passenger service in effect shall apply.

Question 11, Interpretation No. 1, Supplement No. 24:

Do the minimum earnings fixed by Section 3, Article 4, also apply in short turnaround electric

(Plaintiff's Exhibit No. 2 continued)

passenger service whether operated by electric locomotive or multiple unit?

Decision: Yes.

Sec. 4. On valley districts the minimum passenger rate shall be:

| Weight on Drivers | Coal | Oil | Helpers |
|-----------------------------|--------|--------|---------|
| Less than 80,000 lbs..... | \$5.30 | \$5.30 | \$5.30 |
| 80,000 to 100,000 lbs..... | 5.38 | 5.30 | 5.30 |
| 100,000 to 140,000 lbs..... | 5.46 | 5.30 | 5.30 |
| 140,000 to 170,000 lbs..... | 5.62 | 5.46 | 5.30 |
| 170,000 to 200,000 lbs..... | 5.70 | 5.54 | 5.30 |
| 200,000 to 250,000 lbs..... | 5.78 | 5.62 | 5.46 |
| 250,000 to 300,000 lbs..... | 5.78 | 5.62 | 5.46 |
| 300,000 to 350,000 lbs..... | 5.86 | 5.70 | 5.46 |
| 350,000 to 400,000 lbs..... | 5.94 | 5.78 | 5.46 |
| 400,000 to 450,000 lbs..... | 6.02 | 5.86 | 5.62 |
| 450,000 to 500,000 lbs..... | 6.10 | 5.94 | 5.62 |
| 500,000 lbs. and over..... | 6.18 | 6.02 | 5.62 |

Mallet Type:

Regardless of weight on drivers..... \$6.50 \$6.45

Articulated Consolidation:

| | |
|-----------------------------|------|
| 400,000 to 450,000 lbs..... | 6.45 |
| 450,000 to 500,000 lbs..... | 6.45 |
| 500,000 to 550,000 lbs..... | 6.45 |

Sec. 5. On lines east of Sparks the minimum passenger rate shall be:

| Weight on Drivers | Coal | Oil | Helpers |
|-----------------------------|--------|--------|---------|
| Less than 80,000 lbs..... | \$5.47 | \$5.47 | \$5.47 |
| 80,000 to 100,000 lbs..... | 5.55 | 5.47 | 5.47 |
| 100,000 to 140,000 lbs..... | 5.63 | 5.47 | 5.47 |
| 140,000 to 170,000 lbs..... | 5.72 | 5.63 | 5.47 |
| 170,000 to 200,000 lbs..... | 5.70 | 5.64 | 5.40 |
| 200,000 to 250,000 lbs..... | 5.78 | 5.62 | 5.46 |
| 250,000 to 300,000 lbs..... | 5.78 | 5.62 | 5.46 |

(Plaintiff's Exhibit No. 2 continued)

| | | | |
|-----------------------------|------|------|------|
| 300,000 to 350,000 lbs..... | 5.86 | 5.70 | 5.46 |
| 350,000 to 400,000 lbs..... | 5.94 | 5.78 | 5.46 |
| 400,000 to 450,000 lbs..... | 6.02 | 5.86 | 5.62 |
| 450,000 to 500,000 lbs..... | 6.10 | 5.94 | 5.62 |
| 500,000 lbs. and over..... | 6.18 | 6.02 | 5.62 |

Mallet Type:

| | | |
|--------------------------------------|------|------|
| Regardless of weight on drivers..... | 6.50 | 6.45 |
|--------------------------------------|------|------|

Articulated Consolidation:

| | |
|-----------------------------|------|
| 400,000 to 450,000 lbs..... | 6.45 |
| 450,000 to 500,000 lbs..... | 6.45 |
| 500,000 to 550,000 lbs..... | 6.45 |

Sec. 6. Between Phoenix and Hassayampa, Phoenix and Maricopa, Phoenix and Christmas, Phoenix and Casaba, the minimum passenger rate shall be:

| Weight on Drivers | Firemen | Helpers |
|-----------------------------|---------|---------|
| Less than 80,000 lbs..... | \$5.30 | \$5.30 |
| 80,000 to 100,000 lbs..... | 5.38 | 5.38 |
| 100,000 to 140,000 lbs..... | 5.46 | 5.46 |
| 140,000 to 170,000 lbs..... | 5.62 | 5.46 |
| 170,000 to 200,000 lbs..... | 5.70 | 5.46 |
| 200,000 to 250,000 lbs..... | 5.78 | 5.62 |
| 250,000 to 300,000 lbs..... | 5.78 | 5.62 |
| 300,000 to 350,000 lbs..... | 5.78 | 5.54 |
| 350,000 to 400,000 lbs..... | 5.78 | 5.46 |
| 400,000 to 450,000 lbs..... | 5.86 | 5.62 |
| 450,000 to 500,000 lbs..... | 5.94 | 5.62 |
| 500,000 lbs. and over..... | 6.02 | 5.62 |

Mallet Type:

| | |
|--------------------------------------|--------|
| Regardless of weight on drivers..... | \$6.45 |
|--------------------------------------|--------|

Articulated Consolidation:

| | |
|-----------------------------|------|
| 400,000 to 450,000 lbs..... | 6.45 |
| 450,000 to 500,000 lbs..... | 6.45 |
| 500,000 to 550,000 lbs..... | 6.45 |

(Plaintiff's Exhibit No. 2 continued)

Sec. 7. Between Bowie and Miami the minimum passenger rate shall be:

| Weight on Drivers | Firemen | Helpers |
|-----------------------------|---------|---------|
| Less than 80,000 lbs..... | \$5.30 | \$5.30 |
| 80,000 to 100,000 lbs..... | 5.30 | 5.30 |
| 100,000 to 140,000 lbs..... | 5.46 | 5.46 |
| 140,000 to 170,000 lbs..... | 5.62 | 5.46 |
| 170,000 to 200,000 lbs..... | 5.70 | 5.46 |
| 200,000 to 250,000 lbs..... | 5.70 | 5.54 |
| 250,000 to 300,000 lbs..... | 5.70 | 5.54 |
| 300,000 to 350,000 lbs..... | 5.70 | 5.46 |
| 350,000 to 400,000 lbs..... | 5.78 | 5.46 |
| 400,000 to 450,000 lbs..... | 5.86 | 5.62 |
| 450,000 to 500,000 lbs..... | 5.94 | 5.62 |
| 500,000 lbs. and over..... | 6.02 | 5.62 |

Mallet Type:

| | |
|--------------------------------------|------|
| Regardless of weight on drivers..... | 6.45 |
|--------------------------------------|------|

Articulated Consolidation:

| | |
|-----------------------------|------|
| 400,000 to 450,000 lbs..... | 6.45 |
| 450,000 to 500,000 lbs..... | 6.45 |
| 500,000 to 550,000 lbs..... | 6.45 |

Sec. 8. Between Bakersfield and Los Angeles, Mojave and Owenyo, Sacramento and Sparks, Gerber and Ashland, Dunsmuir and Klamath Falls, Klamath Falls and Wendel, including Lakeview Branch, Ashland and Roseburg, Eugene and Klamath Falls, Los Angeles and Indio, including branches between Los Angeles and Indio, (mountain districts), the minimum passenger rate shall be:

(Plaintiff's Exhibit No. 2 continued)

| Weight on Drivers | Coal | Oil | Helpers |
|-----------------------------|--------|--------|---------|
| Less than 80,000 lbs..... | \$5.75 | \$5.75 | \$5.75 |
| 80,000 to 100,000 lbs..... | 5.83 | 5.75 | 5.75 |
| 100,000 to 140,000 lbs..... | 6.08 | 5.92 | 5.92 |
| 140,000 to 170,000 lbs..... | 6.41 | 6.26 | 6.10 |
| 170,000 to 200,000 lbs..... | 6.50 | 6.33 | 6.09 |
| 200,000 to 250,000 lbs..... | 6.58 | 6.42 | 6.26 |
| 250,000 to 300,000 lbs..... | 6.58 | 6.42 | 6.26 |
| 300,000 to 350,000 lbs..... | 6.66 | 6.50 | 6.26 |
| 350,000 to 400,000 lbs..... | 6.73 | 6.58 | 6.26 |
| 400,000 to 450,000 lbs..... | 6.81 | 6.66 | 6.42 |
| 450,000 to 500,000 lbs..... | 6.89 | 6.74 | 6.42 |
| 500,000 lbs. and over..... | 6.97 | 6.82 | 6.42 |

Articulated Consolidation:

| | |
|-----------------------------|------|
| 400,000 to 450,000 lbs..... | 6.70 |
| 450,000 to 500,000 lbs..... | 6.95 |
| 500,000 to 550,000 lbs..... | 7.20 |

Between Roseville and Truckee:

| Weight on Drivers | Coal | Oil | Helpers |
|-----------------------------|--------|--------|---------|
| 140,000 to 170,000 lbs..... | \$7.23 | \$7.07 | \$6.91 |
| 170,000 to 200,000 lbs..... | 7.31 | 7.15 | 6.91 |
| 200,000 to 250,000 lbs..... | 7.39 | 7.23 | 7.07 |
| 250,000 to 300,000 lbs..... | 7.39 | 7.23 | 7.07 |
| 300,000 to 350,000 lbs..... | 7.47 | 7.31 | 7.07 |
| 350,000 to 400,000 lbs..... | 7.54 | 7.39 | 7.07 |
| 400,000 to 450,000 lbs..... | 7.62 | 7.47 | 7.23 |
| 450,000 to 500,000 lbs..... | 7.70 | 7.55 | 7.23 |
| 500,000 lbs. and over..... | 7.78 | 7.63 | 7.23 |

Mallet Type:

| | | |
|--------------------------------------|------|------|
| Regardless of weight on drivers..... | 6.50 | 6.45 |
|--------------------------------------|------|------|

Articulated Consolidation:

| | |
|-----------------------------|------|
| 400,000 to 450,000 lbs..... | 7.47 |
| 450,000 to 500,000 lbs..... | 7.55 |
| 500,000 to 550,000 lbs..... | 7.63 |

(Plaintiff's Exhibit No. 2 continued)

Question 30, Interpretation No. 1, Supplement No. 24:

Schedules of certain railroads provide differentials for divisions or portions thereof, or mountain or desert territory as compared with valley territory. Are such differentials preserved? If so, by what method?

Decision: Such differentials are preserved. Former methods of establishing them are required to be continued. Where expressed in specified amounts of money as compared with valley rates, the same amount of money differential shall be continued.

ARTICLE 5.

Basis for Overtime and When Paid.

Sec. 1. In regular passenger service over 100 miles, the basis for computing overtime shall be the time table schedule of the train.

Sec. 2. In irregular passenger service over 100 miles, the basis for computing overtime shall be the average time table schedule of all regular passenger trains running in the same direction, over the entire territory covered.

Sec. 3. In passenger service, 100 miles or less, the basis for computing overtime shall be five hours.

Sec. 4. On districts over 100 miles where no passenger trains are scheduled, the basis for computing overtime in passenger service shall be 20 miles per hour.